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IN THE CIRCUIT COURT OF  
THE 11TH JUDICIAL CIRCUIT  
IN AND FOR DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,  
et al.,

Plaintiffs,

vs.

R.J. REYNOLDS TOBACCO  
COMPANY, et al.,

Defendants.

\_\_\_\_\_ /

Miami-Dade County Courthouse  
Miami, Florida  
Tuesday, 1:45 p.m.  
January 19, 1999

TRIAL - VOLUME 181

The above-styled cause came on for trial  
before the Honorable Robert Paul Kaye, Circuit Judge,  
pursuant to notice.

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APPEARANCES:

STANLEY M. ROSENBLATT, ESQ.  
SUSAN ROSENBLATT, ESQ.  
CLIFFORD DOUGLAS, ESQ.  
On behalf of Plaintiffs

DECHERT PRICE & RHOADS  
ROBERT C. HEIM, ESQ.  
SEAN P. WAJERT, ESQ.  
On behalf of Defendant Philip Morris

COLL DAVIDSON CARTER SMITH SALTER & BARKETT  
NORMAN A. COLL, ESQ.  
On behalf of Defendant Philip Morris

ZACK KOSNITZKY  
STEPHEN N. ZACK, ESQ.  
On behalf of Defendant Philip Morris

CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER  
R. BENJAMINE REID, ESQ.  
On behalf of Defendant R.J. Reynolds

JONES, DAY, REAVIS & POGUE  
RICHARD M. KIRBY, ESQ.  
On behalf of Defendant R.J. Reynolds

KING & SPALDING  
MICHAEL RUSS, ESQ.  
RICHARD A. SCHNEIDER, ESQ.  
On behalf of Defendant Brown & Williamson

CLARKE SILVERGLATE WILLIAMS & MONTGOMERY  
KELLY ANNE LUTHER, ESQ.  
On behalf of Defendants Liggett Group  
and Brooke Group

SHOOK HARDY & BACON  
EDWARD A. MOSS, ESQ.  
WILLIAM P. GERAGHTY, ESQ.  
On behalf of Defendant Brown & Williamson  
JAMES T. NEWSOM, ESQ.  
On behalf of Defendant Lorillard

DEBEVOISE & PLIMPTON  
ANNE COHEN, ESQ.  
JOSEPH R. MOODHE, ESQ.  
On behalf of Defendant The Council for Tobacco

Research

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(APPEARANCES - Continued)

GREENBERG TRAUIG HOFFMAN LIPOFF ROSEN & QUENTEL  
DAVID L. ROSS, ESQ.  
On behalf of Defendant Lorillard

MARTINEZ & GUTIERREZ  
JOSE MARTINEZ, ESQ.  
On behalf of Defendant Dosal Tobacco Corp.  
and Tobacco Institute

KASOWITZ BENSON TORRES & FRIEDMAN  
AARON MARKS, ESQ.  
NANCY STRAUB, ESQ.  
On behalf of Defendants Liggett Group  
and Brooke Group

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None			

E X H I B I T S

DEFENDANTS ' EXHIBITS	OFFERED PAGE	ADMITTED PAGE	FOR ID PAGE
None			

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1 (Whereupon, the following proceedings were had:)

2 MR. ROSENBLATT: I hate to do this to you,  
3 Judge, but you asked for it.

4 THE COURT: No, no. I only asked if you  
had  
5 it.

6 MR. ROSENBLATT: We have here -- this is  
what  
7 I would intend to do for tomorrow: the depositions  
of  
8 Ellen Merlo, Michael Rosenbaum, Martin Orlowsky, and  
9 Ronald Stanley Fulford.

10 Fulford is the CEO of Liggett after  
Horrigan  
11 left. So, let me hand these up to you.

12 THE COURT: Does anybody now take a 20-page  
13 depo?

14 MR. ROSENBLATT: No. But in some of these,  
15 they're very little.

16 MS. LUTHER: Judge, with regard to  
Rosenbaum,  
17 who is also -- he's a Brooke person, and Fulford, we  
18 just got additional designations on these, that I  
19 haven't had a chance to look at, so I don't know if I  
20 have objections to these designations.

21 THE COURT: Yes. Well, let's see what  
we're  
22 talking about.

23 Rosenbaum and who else?

24 MS. LUTHER: Fulford.

25 THE COURT: Fulford?

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1 MS. LUTHER: Yes.

2 THE COURT: Fulford.

3 MS. LUTHER: I mean, they're not extensive,

4 but I would like at least an opportunity to get back  
to

5 the office and look at the stuff.

6 THE COURT: I'm not going to do it today,

7 that's for sure. It doesn't look like a whole bunch  
of

8 stuff in here.

9 MR. HEIM: Judge, are they color-coded, the

10 ones that were given to you?

11 THE COURT: Yes. It appears to be.

12 Let me just double check. Yes. I've got  
an

13 orange line, a yellow line, blue line and green line,

14 so I guess there's something in there.

15 MR. HEIM: Because with Fulford, for  
example,

16 this morning we got some additional designations --

17 THE COURT: Yes.

18 MR. HEIM: -- as Kelly just said. So we're

19 all going to have to look at those tonight.

20 MR. NEWSOM: The same way with Orlowsky,  
Your

21 Honor. We had additional crossdesignations this  
22 morning to which we'll have objections.  
23 THE COURT: Crossdesignations?  
24 MR. NEWSOM: Right. They did their  
25 designations; we did our objections and

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1 counterdesignations. They were supposed to do theirs  
2 by the 22nd of June.

3 THE COURT: They being --

4 MR. NEWSON: Plaintiffs. They did them  
this morning. So they're several months late.

6 THE COURT: How am I going to determine  
which ones are which, then? I mean, let's take Fulford,  
for example. Okay. And I'm looking to see if there's  
any

9 yellow here that has either not been objected to or  
10 marked in any way, and I really haven't seen any.

11 Well, I'll tell you what. Since you don't  
12 know about Fulford, and those are supposed to be some  
13 designations -- I'm not going to read Fulford  
tonight.

14 And you can go look at it and let me know what the  
15 story is.

16 Let's talk about the others for a second.

17 MR. REID: I can shed some light on

18 Rosenbaum, Your Honor.

19 THE COURT: I'm sorry, sir?

20 MR. REID: I can shed some light on

21 Rosenbaum.

22 THE COURT: Rosenbaum. Okay.

23 MR. REID: Ms. Luther is going to be filing

24 some on her behalf, but I have some that I prepared

and

25 I have a transcript for you that's marked up, so I

can

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1 hand that up.

sure.

2 THE COURT: Wait a minute. I'm not so

3 MR. REID: Your copy doesn't appear to be

4 marked up.

5 THE COURT: Mine is marked.

6 MR. REID: Okay.

7 THE COURT: I don't know, when I look at

objections

8 these -- there's markings on it and there's

markings.

9 on there and there's also some blue and green

10 It looks to me like --

you

11 MR. REID: There were some additions, as

12 know, today.

13 THE COURT: To Rosenbaum?

14 MR. REID: Yes, as I understand. This



ought

15 to be coded, the one I'm handing to you and counsel  
16 right now.

17 THE COURT: Okay.

additional

18 MR. REID: You may be getting some

19 objections by Ms. Luther on Rosenbaum, but those are  
20 the ones that I filed on behalf of RJ Reynolds.

21 THE COURT: It gets too confusing here.

because

22 MR. REID: I think it gets confusing

23 there were subsequent -- there were changes made  
24 yesterday or whatever. So we had to go back to the  
25 drawing board this morning.

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1 THE COURT: So if this one is okay, the one  
2 that you just gave me --

3 MS. LUTHER: Well, I still need to look at  
4 that one, Judge.

5 THE COURT: You don't know if it's okay  
6 because you haven't looked at it.

I

7 MS. LUTHER: Right. To tell you the truth,  
8 haven't had a chance to look at RJR's  
9 counterdesignations.

But

10 MR. REID: No, because we just did them.

11 you could get started by looking at those and I guess

12 we could add them, if you needed something to do.

13 THE COURT: Yes. Orlowsky.

14 MR. NEWSOM: I think Mr. Rosenblatt just  
gave

15 you a color-coded one. We have a color-coded one of

16 Orlowsky and we designated counterdesignations,  
marked

17 those in pink, so you can tell those from the other

18 designations.

19 And we will have objections to those. We

20 just got them this morning.

21 THE COURT: Well, I don't know what to do

22 with the stuff now. Now I'm not so sure. Usually I

23 get one, it's color-coded, and I just read it. Now  
you

24 give me two copies and you tell me neither of them is

25 complete.

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1 MS. LUTHER: That's part of the problem

with

2 getting last-minute designations and last-minute

notice

3 of what counsel wants to do.

4 THE COURT: Do I have a complete one, for

5 example, Merlo?

6 MR. HEIM: Judge, it would be helpful for

me

7 if I knew as a start which Merlo transcript that is.

8       There's two of them.

9               THE COURT:   December 7th.

10              MR. HEIM:    Of what?

11              THE COURT:   '93.

12              MR. HEIM:    All right.

13              MR. ROSENBLATT:   That has to be first.

14              MR. HEIM:    Right.   That has to be the one  
15   that was taken in the Broin case, I would gather.

16              THE COURT:   Yes.

17              MR. HEIM:    Now that I know that, I can

check

18   on that.   That may well be done.

19              Do you know, Chris?

20              Okay.   And if there's -- I gather that

there

21   hasn't been any additional.

22              THE COURT:   Let me ask you.

23              MR. HEIM:    We're not dealing with that.   I

24   think that one is done.

25              THE COURT:   Okay.

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1              MR. HEIM:    And I have one here that has the  
2   yellow, the orange and the green all highlighted on  
3   theirs.   It should be the same as yours, I would

hope.

4              THE COURT:   I also have one that has some  
5   blue.

6 MR. HEIM: Blue?

7 THE COURT: Blue. And that threw me a  
little

8 bit. I mean, there's one or two little things.

9 MR. HEIM: Give me a page, Judge.

10 THE COURT: 31, for example, Line 4, 5 and  
6.

11 Page 31. That's probably --

12 MR. NEWSOM: Sometimes they mark green on  
top

13 of yellow.

14 THE COURT: No.

15 MR. HEIM: I don't have 4, 5 and 6.

16 THE COURT: You're talking now about --  
here.

17 It's somebody's counterdesignation, I'm sure, but I'm  
18 not sure who uses blue.

19 I'll tell you, what we're going to find, as  
I

20 run through this, in my opinion, is we're going to  
find

21 the designations of the plaintiff, we're going to  
find

22 some counterdesignations already in there, and if  
there

23 are additional designations and additional  
24 counterdesignations, as we run through it --

25 MR. HEIM: Yes. I think there are probably

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1 so few we could probably on Merlo take them up on the

2 fly.

3 MR. NEWSOM: Same way with Orlowsky, Your  
4 Honor. There are only five counterdesignations. We  
5 haven't made objections to those yet, but we will by  
6 tomorrow morning.

you

7 THE COURT: Whose counterdesignations are  
8 objecting to?

9 MR. NEWSOM: They made crossdesignations,  
10 after we did our designations. The plaintiffs today  
11 made further designations they wanted in response to  
12 our designations.

13 THE COURT: How am I supposed to know which  
14 ones they are?

15 MR. NEWSOM: Well, I've marked on this one,  
16 I've marked them in pink.

is

17 THE COURT: Okay. So plaintiffs' counter  
18 going to be in pink.

those,

19 MR. NEWSOM: Then we object to some of  
20 but we haven't filed them.

21 THE COURT: You object to those?

22 MR. NEWSOM: We'll do them later, in the  
23 morning.

24 THE COURT: Well, I don't understand where  
25 you're going with this because I have a problem with

1 Orlowsky. That's Merlo. I'm sorry.

2 MR. ROSENBLATT: Although, Judge, it might  
3 jury, make sense, since we do have things to do for the  
4 to kind of leave this for the end of the day.

5 THE COURT: Oh, yes. I'm not going to do  
it 6 now. I'm just trying to put it in order to see what  
7 I'm doing here.

8 All right. What we're going to do now is  
9 read a deposition of?

10 MR. ROSENBLATT: Samuel Chilicote.

11 THE COURT: Chilicote.

12 MR. ROSENBLATT: Okay. That's where we are  
13 now. We've also completed Lauria.

14 THE COURT: Right.

15 MR. ROSENBLATT: So then the only other  
thing 16 is for you to give --

17 THE COURT: Merryman.

18 MR. ROSENBLATT: -- give us your rulings on  
19 Merryman, which we will do after a break.

20 MR. MARTINEZ: Your Honor, along those  
lines,

21 I'm not asking you to revise your rulings, because I  
22 had objected before, but I want to make -- I want the  
23 record to be perfectly clear that in addition to  
24 relevance, speculation and foundation, on Page 26,

our 25 position is that --

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1 THE COURT: Chilicote.  
 2 MR. MARTINEZ: -- preemption is involved.  
 3 THE COURT: Chilicote.  
 4 MR. MARTINEZ: Yes, Your Honor.  
 5 THE COURT: Let me see.  
 6 MR. MARTINEZ: The first one. I have a few  
 7 on the other fellow, on Lauria. The question that  
 8 starts on Line 4.  
 9 THE COURT: Yes. I'm reading it.  
 10 No. That's not to me a preemption issue.  
 11 MR. MARTINEZ: I understand, Your Honor.  
 12 not urging -- I'd like you to -- I'm not asking you  
 13 revise your ruling. Could I just, for the record --  
 14 THE COURT: If I revise my ruling, I would  
 15 going down a path of error.  
 16 MR. MARTINEZ: Sir, I'm afraid it's too  
 17 for that in the preemption area.  
 18 Your Honor, just for the record, could I do  
 19 the Lauria one, just so we don't have to revisit it?  
 20 THE COURT: Yes.  
 21 MR. MARTINEZ: On Page 26 --  
 22 THE COURT: Yes.  
 23 MR. MARTINEZ: -- we believe that that  
 24 question also goes into the area of preemption: Are  
 25 you familiar with the warnings? What do the warnings

I'm

to

be

late

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1 say? What do you think it says? Does it say -- you  
2 know, asking him to interpret the --

3 THE COURT: No, no. I think what the  
4 question is: There's a warning. Do you know the  
5 actual wording of the warning? Does the warning

that,

6 as you know it, say it can cause cancer or it does  
7 cause cancer? He said he doesn't know which one it  
8 was.

9 MR. MARTINEZ: But then if you look at the  
10 question that starts on Line 18, it's very clear what  
11 they're saying. Big difference from the standpoint

of

12 the consumer. Wouldn't you think if the warning said  
13 cigarette smoke may cause cancer, or it says it  
14 cancer.

causes

15 THE COURT: Right.

16 MR. MARTINEZ: Clear implication. It

should

17 say one or the other.

18 THE COURT: No, that's not the implication.  
19 I disagree with you that that would rise to the level  
20 of a preemptive issue.

21 MR. MARTINEZ: Yes, sir.

22 THE COURT: Although it touches on what the  
23 warning does or does not say. But it's not in that



24 light, the context that we're talking about.

25 MR. MARTINEZ: Your Honor, on Line -- Page

29

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to

out

that

1 and 30, starting with "What is tar," and then going

2 the bottom of Page 30, Line 18, because you've cut

3 a middle section: Why do they talk about low tar?

4 It's implying that they should be advising people

5 low tar does or does not mean anything. That, I

6 believe, is preempted also.

7 THE COURT: I can't buy that implication.

8 MR. MARTINEZ: I understand, Your Honor.

9 Your Honor, on Page 48, Line 24, I believe

street,

10 that question specifically says, the man on the

11 who keep hearing from you that it hasn't been proven,

12 how do they know; they aren't scientists or doctors,

13 either implying that what we are saying to them is

14 insufficient, although Congress has said that it is

15 sufficient just by putting on the labels.

one.

16 THE COURT: That's closer than the other

17 MR. MARTINEZ: I got a closer one later,

18 but -- this is the closest one so far, Judge.

19 THE COURT: Yes. But even so, I'm not so

20 sure that relates to the advertising.

21 MR. MARTINEZ: I understand, Your Honor. I  
22 just don't want it to go in without some objection.

23 THE COURT: Yes. You can have the  
objection.

24 MR. MARTINEZ: Your Honor, on Page 55, the  
25 question is: I'm saying what is the reason that the

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1 Surgeon Generals have uniformly and unanimously come  
2 out against tobacco? The answer is, in effect, that  
3 they believe that the public needs to be informed  
about  
4 it.

5 And then the question: And your job is to  
6 shoot holes in that and say it hasn't been proven it  
is  
7 a statistical linkage, there is no cause and effect?  
8 That is your accomplishment?

9 And the answer was no.  
10 I think that clearly relates also to what  
the  
11 public is advised or not advised.

12 THE COURT: Overruled.

13 MR. MARTINEZ: I understand.

14 Okay. Let's get a jury out here.

15 Chilicote first?

16 MR. ROSENBLATT: Yes, Judge.

17 MR. MARTINEZ: Judge, rather than to go

just

spots?

18 through this individually, the ones we did this  
19 morning, can I just give them to you in writing so we  
20 can discuss the ones we want to make sure that  
21 preemption is specifically mentioned as opposed to  
22 our general objection? I'll just give you a list  
23 rather than go through this exercise.

24 THE COURT: Does a leopard change its

25 MR. MARTINEZ: Pardon me? I don't think a

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1 leopard starts changing its spots.

2 THE COURT: When do you change your spots?

3 MR. MARTINEZ: I like spots.

4 THE BAILIFF: Bringing in the jury.

5 Jurors entering the courtroom.

6 (The jury entered the courtroom.)

7 THE COURT: Okay. Everybody is here.

We're

8 ready to go.

9 Have a seat.

of

10 We are going to go through the deposition

11 a Samuel Chilicote, or Chilicote.

12 Who is going to be the reader?

13 MR. ROSENBLATT: Mr. Douglas, Judge.

14 THE COURT: All right.

15 MR. ROSENBLATT: Mr. Chilicote's deposition  
16 was taken in Washington, D.C., November 19, 1993.  
And  
17 he spells his name C-H-I-L-C-O-T-E.  
18 (The deposition of Samuel Chilicote was  
read  
19 as follows:)  
20 MR. ROSENBLATT: Page 4.  
21 Q. Tell me your name and address, please, sir.  
22 A. Sam Chilicote,  
23 [DELETED].  
24 Q. You are the president of the Tobacco  
25 Institute?

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1 A. Yes.  
2 Q. And for how long have you been the  
president  
3 of the Tobacco Institute?  
4 A. Since 1981.  
5 MR. ROSENBLATT: And then we go to Page 9 -  
-  
6 well, I guess the last question on Page 8, Line 25.  
7 Q. So what was the next employment?  
8 A. Then I went back to work for two  
9 organizations as their field representative. One was  
10 called Licensed Beverage Industry, and the other was  
11 the Distilled Spirits Institute. And I was a  
regional

12 person for those two organizations covering a region,  
13 living and working out of Cheyenne, Wyoming.

14 Q. Were these state-wide groups, nation-wide  
15 groups?

16 A. They are nation-wide organizations.

17 Q. What exactly are they? I seem to get an  
18 impression from the name, but tell me what these  
19 organizations were.

20 A. The Distilled Spirits Institute was the  
21 organization that represented the distilleries. They  
22 were in collecting brand, class and type information,  
23 handle the governmental relations at the state level,  
24 federal level.

25 It is a straight association. Represented

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as

1 the distilling interests, and Licensed Beverage  
2 Industry was involved in trying to promote messages  
3 far as the Alcoholic Beverage Industry was concerned.

4 This was, I guess, more a public relations  
5 arm for the distilleries; did a lot of work with  
6 licensees and wholesalers, so I worked in that  
7 capacity.

8 Q. So you were the field rep for both these  
9 organizations?

10 A. Yes. They each took half my time, so to

11 speak.

12 Q. But there was obviously a connection  
between

13 the two organizations?

14 A. Both of them. The distilling industry at  
15 that particular time had three groups that  
represented

16 them: Bourbon Institute, Licensed Beverage Industry  
17 and the Distilled Spirits Institute. So they had  
18 several trade groups representing them.

19 Q. Did you do a lot of traveling in that job?

20 A. Yes.

21 Q. All over the country, or a particular  
region?

22 A. In a particular region. My areas of  
23 responsibility were the Dakotas, Nebraska, Wyoming,  
24 Minnesota.

25 Q. Did you ever do anything beyond being a  
field

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1 representative for these organizations?

2 A. With those organizations, later in my  
career,

3 I did other jobs for them.

4 Q. So what other jobs did you do for them,  
other

5 than field rep?

6 A. Other than working in a field  
representative

well  
organizations

7 position, both organizations thought I worked out  
8 for them, so they said either one of our  
9 would like to have more of your time.

10 So they asked me to make a decision: If I  
11 wanted to work for the Licensed Beverage Industry or  
12 the Distilled Spirits Institute.

13 I, at that time, elected the Distilled  
14 Spirits Institute, so I was their regional  
15 representative covering basically the same area.

their  
16 Later they asked that I come in to run  
17 field division. They had organizations out. I guess  
18 they thought I did a good job at the job that I was  
19 doing, so I came in as their state director, living  
20 here in Washington, D.C.

21 Q. The state director. Which state?

22 A. I had responsibility for all of the states  
23 with field people, representatives like myself then  
24 underneath me.

25 Q. As a practical matter, what did you do in

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1 that job on a day-to-day basis, primarily?  
2 A. As the state director?  
3 Q. Yes.  
4 A. Tried to keep abreast of all of the

5 legislative and regulatory matters that were  
happening  
6 in the state legislature relative to distilled  
spirits.  
7 Also, as I said earlier, one of the  
functions  
8 of the organization was the collection of brand,  
class  
9 and type information; make sure there was the flow of  
10 that information so that these reports could be made  
to  
11 the distilleries, the members of the organization.  
12 Q. Who are the members of the organization,  
the  
13 Distilled Spirits Institute?  
14 A. Most of the distilleries were American  
15 distilleries. It was an organization that  
represented  
16 the American distilling interests.  
17 Q. Would that include the makers of scotch and  
18 bourbon?  
19 A. The whiskey end of the business. There are  
20 many companies that would, for example, have scotches  
21 or they would have wines, and then they had their own  
22 production. Some of them were rectifiers, where they  
23 would buy alcohol from other places and rectify it  
and  
24 do the bottling. So that comprised the membership.  
25 Q. About how many members were there of the

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15

page,

later

decided

1 Distilled Spirits Institute?

2 A. I can't remember, but I would say probably

3 to 20, in that category.

4 MR. ROSENBLATT: Then we go to the next

5 Line 3.

6 Q. So for how long a period of time were you  
7 involved with the distilled spirits industry?

8 A. 14 years.

9 Q. Have you told me pretty much every position  
10 you occupied?

11 A. No. Then I was a state director. Then  
12 I became the executive director of the Distilled  
13 Spirits Institute.

14 Q. That was in what year, that you became  
15 executive director? If you are off a year or two, it  
16 is not going to be a big deal. So give me your --

17 A. I would say it was within the '70s, early  
18 '70s. Then from there the distilling interests

19 they wanted to have an amalgamation of the three  
20 different trade groups that represented the Distilled  
21 Spirits Institute, Licensed Beverage Industry and  
22 Bourbon Institute.

23 Had an amalgamation of those three trade  
24 organizations, based upon a consultant's evaluation  
25 that they thought they would provide better

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1 representation on the part of the companies.

be

2 MR. MARTINEZ: Your Honor, I don't mean to

trade

3 picky, but that's not the word. It's not "three

4 organizations."

5 THE COURT: Let me see.

6 MR. MARTINEZ: Line 21.

7 THE COURT: Line what?

8 MR. MARTINEZ: 21. No big deal.

9 THE COURT: Amalgamation.

the

10 MR. MARTINEZ: I want to be sure we read

11 words that are there. The word that was read was

12 "organizations."

13 THE COURT: It says, "Had amalgamation of

14 those three trade associations."

15 MR. MARTINEZ: But the word that was said

16 from the witness stand was "organizations." I just

17 want --

18 THE COURT: Associations.

the

19 MR. MARTINEZ: I want to be sure we read

20 right word.

21 THE COURT: Associations.

amalgamation.

22 A. I then became president of the

23 That new organization was called Distilled Spirits

24 Council.

25 Q. When was that formed, what year, the

19977

1 Distilled Spirits Council?

2 A. About '77, '78, in there.

3 Q. So you were the first president of that new  
4 entity?

5 A. Yes.

6 Q. And you were the number-one guy?

7 A. Yes, sir.

8 Q. Who was the number-two person?

9 A. Well, I had a field division. I had a

legal

10 division. There was no number-two person, as such.

It

11 was sort of a divisional structure.

12 John McKaren was in charge of my legal.

13 Dr. Bill Pendergas. There were some changes in

14 personnel, obviously, but the last, Dr. Pendergas was  
15 in charge of my Federal regulations.

16 Q. What -- what kind of doctor was he, M.D. or  
17 Ph.D?

18 A. He was an education Ph.D.

19 Q. So you were president of the Distilled  
20 Spirits Council from when to when?

21 A. From '77 until '81, or when I joined the  
22 Tobacco Institute.

23 MR. ROSENBLATT: We go to Line 7 on Page

15.

24 Q. So, in other words, when you went with the

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1 A. Right.

2 Q. When you went with TI, you, at that time,  
3 were still president of the Distilled Spirits

Council?

4 A. Yes.

5 Q. Why -- why did you leave? Why did you make  
6 that switch in 1981?

7 A. They had a search firm which was Heidrich  
8 Struggals, the name of the search firm who was doing

a

9 search for the cigarette manufacturers. They

contacted

10 me and wanted me to interview for the position, and I  
11 did interview for the position.

12 Q. Did that contact come from out of the blue,  
13 or had there been earlier feelers?

14 A. Completely out of the blue.

15 Q. No expression of interest by you?

16 A. No. I was perfectly satisfied in the job I  
17 had, and I enjoyed representing the distilleries very  
18 much.

19 Q. Prior to the time you interviewed for the

job

20 with TI, had you had any connection whatsoever with

the

21 tobacco industry?

22 A. No, sir.  
23 Q. Who interviewed you for TI?  
24 A. The guy in charge of the search was Richard  
25 McFarland, Dick McFarland. That is who was with

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1 Heidrich Struggals, the person I talked to.

2 Q. Who did you actually meet at TI? Did  
anyone  
3 from TI interview you?

4 A. As we moved through the interviewing  
process,  
5 I talked with Horace Kornegay, who was then the  
6 president of the Tobacco Institute, and he gave me an  
7 overview of the Tobacco Institute.

8 After the search started proceeding, I met  
9 with some of the executive committee members of the  
10 Tobacco Institute as part of the interviewing  
process.

11 Q. You met with some of the presidents and  
CEOs,  
12 for example, of Philip Morris, RJ Reynolds, those  
13 people?

14 A. Yes.

15 Q. Did you meet with the presidents and CEOs  
of  
16 all of the major companies before you actually took  
the  
17 position?

18 A. Yes.

19 Q. So is it fair --  
20 A. The head of the company or his member on  
the  
21 executive committee. We have two people from each  
22 company on the executive committee.  
23 It would have been one or both of them,  
24 depending upon their availability.  
25 Q. The executive committee of TI?

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1 A. Yes.  
2 Q. How long did the process take, the  
3 interviewing process take?  
4 A. The interviewing process didn't take too  
5 long. It was like a month or two. As far as myself  
6 was concerned, it was time to think it over, to think  
7 about if this was the right career move or not, the  
8 right career move. I was deliberating over it for  
9 several months.  
10 Q. Obviously, we know you took the job. So  
what  
11 was the primary motivating factor from your  
standpoint  
12 as to why you left the job you were happy with and  
13 earning good money to take another job in a new  
14 industry?  
15 A. Primarily career development. I saw this  
as

16 an opportunity to run two trade groups for two  
17 different industries, which I thought in terms of  
18 resume enhancing, experience and this kind of thing,  
19 because I thought it would be in my best interests.

20 I could have stayed with the distilling  
21 interests until I retired, so to speak, but I was a  
22 young man, relatively young to have had that  
position.

23 And I thought also it was the challenge of  
24 working with a new problems -- new ideas, because I  
had  
25 been with the other group for quite a period of time,

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19981

1 and I wasn't quite sure I wanted to spend another 20  
2 years doing the same thing, same people. So that was  
3 the motivating factor.

4 Q. Did you have a philosophy about smoking  
when  
5 you were considering the new job?

6 A. Not really.

7 Q. Are you a smoker?

8 A. Yes. I smoke a pipe. Enjoy a cigar after  
a  
9 meal.

10 Q. Have you ever been a cigarette smoker?

11 A. No, sir.

12 Q. Never?

13 A. Never.

14 MR. ROSENBLATT: Go to Page 20, Line 6.

15 Q. So obviously at some point you said to  
16 yourself: I'm going to leave the distilling industry  
17 and I'm going to go with TI?

18 A. Yes.

19 Q. I assume you made more money in the new  
job?

20 A. It was sort of a push. I can't remember.  
I

21 think it was 180.

22 MR. MARTINEZ: Excuse me.

23 MR. ROSENBLATT: No, no.

24 MR. MARTINEZ: I don't think that -- that  
was

25 deleted.

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1 MR. ROSENBLATT: Yes.

2 THE COURT: "Sort of a push," where you put  
3 your finger.

4 MR. DOUGLAS: Right here.

5 MR. MARTINEZ: In that regard, Your Honor -

6 THE COURT: "I can't remember. About the  
7 same amount of money." Just eliminate that whole  
8 thing.

9 A. I can't remember.

10 THE COURT: "I can't remember."



11 A. About the same amount of money.  
12 THE COURT: "About the same amount of  
money."  
13 MR. ROSENBLATT: Page 20, Line 5.  
14 Q. Who evaluates the job performance?  
15 A. The executive committee, members of the  
16 executive committee.  
17 Q. The presidents and CEO of the member  
18 companies?  
19 A. Yes, sir. They will have a discussion.  
20 Q. Do you have a written contract?  
21 A. Yes, sir, I do.  
22 MR. ROSENBLATT: We go to Line 25 on Page  
21.  
23 Q. Why was Kornegay leaving? Why did they  
need  
24 a new president?  
25 A. Horace had served in Congress and then  
joined

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North  
1 the Tobacco Institute. He was a congressman from  
2 Carolina, just getting close to retirement.  
3 I think the cigarette manufacturers,  
staging  
4 for his eventual retirement, wanted to have me come  
5 aboard to see if I could operate as the head of their  
6 trade association.  
7 Q. Was -- was it your understanding that that

8 was a voluntary move on Mr. Kornegay's part?

9 A. Oh, yes.

10 Q. How long had he been president before you  
11 took over?

12 A. Probably -- this is really a guess -- ten  
13 years or so.

14 Q. Do you know who was president before him?

15 A. Yes, sir.

16 Q. And who was that?

17 A. It was a fellow who was a former governor

and

18 senator from the State of Kentucky. His name was

Earl

19 Clements, Senator Earl Clements.

20 Q. He was a U.S. Senator from Kentucky?

21 A. Yes.

22 Q. Did you know him?

23 A. Yes. I didn't know him with -- he wasn't

the

24 personal kind of relationship. Working for the

25 distilleries, everyone knew who Senator Clements was,

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1 particularly being from Kentucky, the bourbon state.

2 Q. And the tobacco state?

3 A. And the tobacco state. I knew who Senator  
4 Clements was.

5 Q. Clements is a Republican or Democrat?

6 A. He was a Democrat.

7 Q. How long did Kornegay serve in Congress, do  
8 you know?

9 A. Several terms. I would say probably six to  
10 eight terms. I'm really not sure.

11 Q. Do you know if he was defeated in an  
election  
12 or he retired from Congress?

13 A. Retired.

14 Q. Since you took over as president of TI, do  
15 you have much contact with Mr. Kornegay?

16 A. We have been friends, and I will see him  
17 periodically, once a month or so -- he is down at  
18 [DELETED] -- maybe not even that often. He and his  
19 wife live in [DELETED] now.

20 Q. He is a lawyer? Does he practice in  
21 Greensboro?

22 A. Yes, sir.

23 Q. Does he still represent tobacco interests  
as  
24 an attorney?

25 A. He represents American Tobacco, to keep  
them

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1 primarily informed on legislative affairs.

2 Q. As president of TI, do you go into the  
3 office? Do you have regular hours?

4 A. Very regular.

5 Q. Unfortunately?

6 A. Yes, sir.

7 Q. Like 9 to 5?

8 A. A little longer than that.

9 Q. You spend most of your time in the office,  
as  
10 opposed to on the road?

11 A. Yes. Most of the time. Like any -- you  
have  
12 industry functions, meetings you go to. I do a fair  
13 amount of traveling.

14 Q. When -- when you were in the office, what  
is  
15 an average day? What do you spend most of your time  
16 doing?

17 A. Processing paper, like everybody.

18 Q. What kind of paper?

19 A. Well, reading reports, looking at  
clippings,  
20 answering mail. Just performing the usual  
21 administrative functions that any chief executive  
22 officer would be involved in.

23 Q. For example, do you personally get involved  
24 with responding to media inquiries?

25 A. No. I'm fortunate in having spokespersons

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1 that do that. We have a media relations division.

2 Q. And they take care of that?

3 A. Yes.

your

4 Q. Have you established a policy as to how

5 media relations people respond to media inquiries?

6 A. No. They are trained in that area. They  
7 state the industry position when asked.

8 Q. What is the industry position, for example,  
9 if someone calls up and says: I got a package of  
10 cigarettes in front of me. The package says:  
11 Cigarette smoking causes lung cancer. Does it?

would

12 A. They would -- the response would be, I

be

13 think -- I don't know, but I would think they would

14 consistent with the industry position and state in

response.

15 however -- as individuals, there is not a pat

16 Q. You mean it is really that free-form?

If

17 A. Well, it has parameters, like any state.

I

18 you were to call me up and ask me: What about that,

19 wouldn't be reading from a piece of paper, I don't

20 think. I would just be responding based upon the

21 position that the industry has.

22 Q. What is the industry position on that

a

23 question? A caller calls from the New York Times or

a

24 member of the public, and says: Hey, I'm looking at

25 package of Marlboros, and it says: Surgeon Generals

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1 Warning: Cigarette smoking causes lung cancer. Does  
2 it? What is the industry position answer to that  
3 question?

4 A. We really don't get many calls along that  
5 line, where somebody would call up, I don't think.

But

6 the industry's position is that no one really knows  
7 what causes cancer. There is a risk associated with  
8 it. They don't deny that. That is how I would  
9 respond. I don't know how they would respond.

your

10 Q. Does it happen occasionally where one of  
11 people from the Tobacco Institute comes in and says

to

12 you: You know, I got this inquiry, this newspaper,

and

13 it is a little unusual. How do you think I should  
14 handle it? Or are they almost 100 percent

autonomous?

15 A. They would come in and say: I got an

unusual

16 request, whatever it may be, making this assumption.

17 They would say: This is how I think we should

respond,

18 and if it is consistent with the tobacco industry's  
19 position, they would respond that way. If it was  
20 something really off the wall, unusual, they wouldn't  
21 just go out and respond. They know our position on

all

22 matters. Most of them are sort of like a rope. Same  
23 things keep coming up.

24 Q. And you keep saying the same things?

25 A. We do have a consistent message.

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19988

when

1 Q. It has really been consistent from '81,

2 you became president, up until today, or has it

3 changed?

4 A. No, it hasn't changed.

5 Q. What is the industry position on passive

but

6 smoke? Someone calls and says: I'm not a smoker,

7 in my work environment, people are allowed to smoke.

have

8 It bothers me, but, more importantly than that, I

Is

9 read the EPA report. I'm worried about my health.

10 it a danger?

11 A. We do not feel that passive smoking is --

know,

12 that there is a risk associated with it. As you

13 there have been studies that have pointed out

14 statistical associations.

15 There have been many studies, in fact more

16 studies on the other side, so -- say there isn't any

17 risk. But we don't form an opinion relative to the

18 risk. We just state our knowledge.

19 Q. Is the industry position relative to

20 environmental tobacco smoke, that it poses no danger?

21 A. That's correct.  
22 Q. Are you aware of any scientific or medical  
23 report that says that?  
24 A. That there is no danger?  
25 Q. That there is no danger.

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this, 1 A. I think there has been a big debate on  
2 as you know. Scientists have said there is a risk  
3 associated. Others have said it is insignificant or  
4 they don't know.

question. 5 It is really sort of an unanswered

6 Q. Is it your impression or your understanding  
7 that medical people outside the tobacco industry have  
8 written articles that have been published in  
9 respectable medical journals to the effect that  
10 environmental tobacco smoke is no problem to health?

in 11 A. Yes. I think most of the studies that have  
12 been done to date on the environmental tobacco issue  
a 13 the United States take that position, that it is not  
14 problem.

15 Q. That it is not a problem?

16 A. Yes.

29. 17 MR. ROSENBLATT: Going to Line 12 on Page



18 Q. You don't -- you don't have any medical  
19 background yourself?  
20 A. No, sir.  
21 Q. But, for example, when technical subjects  
22 come up or a report is issued by the Surgeon General,  
23 by the EPA, by some other organization, do you have  
24 with TI a technical person, a physician, someone with  
25 scientific background that you can say: Hey, explain

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19990

1 this to me in normal, everyday language?  
2 A. No. We don't have any technical people on  
3 the staff.  
4 Q. If you had a technical question -- I know  
5 haven't read the EPA report, but let's say you did  
6 you came to a paragraph you didn't understand and you  
7 wanted to understand it. Is there a guy at Philip  
8 Morris or RJ Reynolds, anywhere, a doctor you would  
9 call?  
10 A. I wouldn't call; my staff would. If they  
11 a question concerning an industry position, they  
12 send it to the companies who do have doctors and  
13 scientists, their organizations, and they would make  
14 the interpretation. They would tell us how they felt  
15 about the report.

you

and

had

would

16 Q. In terms of fielding inquiries, either from  
17 the media or from the general public -- and I assume  
18 that your people will accept calls from the general  
19 public and answer them to the best of their ability?

20 A. Yes. They do accept calls from the general  
21 public. They don't get that number of calls.

22 Q. They don't get that many?

23 A. No. I don't think so.

24 MR. ROSENBLATT: Now we go to Page 33, Line  
25 6.

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19991

1 Q. If I said to you, for example, or there was  
2 an order of the court, you got a call from your  
lawyer  
3 saying: We want to see every press release ever put  
4 out by TI since you became president, my initial  
5 question is, do those records exist?

6 A. I don't know. I'm sure we have most of  
them,  
7 but I don't know how long they go back.

8 Q. And if you wanted to find out the answer to  
9 that question, would you call your secretary or who?

10 A. I would call Brennan Dawson, the head of  
the  
11 media relations division, and say: How far do our  
12 press releases go back? And Debbie would do the same  
13 thing. She would refer the caller to media

relations.

14 Q. Can you give me an average of how many  
15 letters you send out a week or a day to various  
people  
16 or organizations?

17 A. On an average, say, 10 to 20, probably.

18 Q. 10 to 20 a week?

19 A. A day.

20 Q. Generally, what kind of letters? To who?

21 A. Would you participate in something like  
this,  
22 you know, for meetings, be about the range.

23 Q. How often does the executive committee of

24 Tobacco Institute meet?

25 A. Four to five times a year. About every  
other

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19992

1 month.

2 Q. Where are the meetings held, usually?

3 A. Either in Washington or New York. Most of  
it  
4 in Washington.

5 Q. Who attends those meetings?

6 A. The representatives of major cigarette  
7 manufacturers that belong to the Tobacco Institute.

8 Q. Who attends from TI, other than, I assume,  
9 you do?

10 A. I do.

11 Q. Other than you?

12 A. My division heads will attend and make  
13 reports on their respective divisions.

14 Q. Is that the usual agenda, that your  
division

15 heads will appear at the executive committee meeting  
16 and give a report?

17 A. That's correct.

18 Q. What is usually the purpose of the  
executive

19 committee meetings?

20 A. To have an understanding of what we are  
doing

21 as a trade association, like any other trade group,  
to

22 say this is what we are doing, this is what is  
23 happening, activity report.

24 MR. ROSENBLATT: We go to Line 23 on Page  
35.

25 Q. What is the Council for Tobacco Research?

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19993

1 A. The Council for Tobacco Research is a  
2 research organization, I guess, that looks into the  
3 scientific matters concerning cancer and other  
things.

4 Q. Do you know that for a fact, or is that  
5 something you simply assume by their name?

6 A. That is just an assumption. I don't know  
for

7 a fact.

8 Q. Have you ever had any occasion to read any  
9 literature coming out of the Council for Tobacco  
10 Research?

11 A. No, sir.

12 Q. So when you say they are a research group,  
13 you don't really know what kind of research they do?

14 A. No, sir.

15 Q. Do you know Dr. James Glenn?

16 A. No, sir.

17 Q. Is it fair to say that TI is a lobbying  
group  
18 for the tobacco industry?

19 A. Yes. We are their advocate before  
20 governmental agencies.

21 MR. MARTINEZ: 41.

22 MR. ROSENBLATT: Go to Page 41, Line 7.

23 Q. Obviously, there is a certain amount of  
24 reading in connection with your job. What do you  
read  
25 mostly? I mean, do you read press reports about the

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19994

1 tobacco industry?

2 A. My staff will prepare press clips for me  
that  
3 every day just sort of give me a feel for what is  
4 happening. Like anyone, I read the Wall Street

a

5 Journal, New York Times, Washington Post, sort of get

6 feel for what is happening generally. USA Today.

7 I will read legislative reports, what is

8 being introduced in a particular state, in Congress,

9 regulatory. That would be the typical things I would  
10 read.

11 MR. ROSENBLATT: Page 43, Line 3.

12 Q. Could you give me a history of the Tobacco  
13 Institute, including any predecessor association that  
14 acted as the tobacco trade association?

15 A. The Tobacco Institute was formed in 1958.

I

16 don't know if there was any other association before  
17 that time.

that

18 Q. And I take it, it is your understanding

19 pretty much from 1958 until the present time, TI has  
20 performed essentially the same functions?

involved.

21 A. Yes. Like any group, you get more

don't

22 When they started out originally, for example, I

23 think they had a field division.

get

24 They may have had a person in it, but you

25 the functions that are added and deleted. I'm going

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1 through that right now.

2 Q. Do you know what was the Tobacco Industry  
3 Research Committee, which I believe was formed about  
4 1954? Does that ring a bell to you, at all?

5 A. No, sir.

6 Q. You know nothing about it?

7 A. Absolutely nothing.

8 Q. Does TI put out any kind of publication,  
even  
9 informal, such as a brochure or a newsletter, either  
10 directed toward the member companies or to anyone  
else?

11 A. Yes, we do. I'll have sort of a  
legislative  
12 update sent to my member companies, the executive  
13 committee every Friday. The state division, their  
14 counterparts, will have a legislative update at the  
15 state level.

16 MR. ROSENBLATT: What's the next page?

17 53. Page 53, Line 16.

18 Q. What was the budget of the Tobacco  
Institute  
19 before the recent reorganization, the total budget?

20 A. \$38 million.

21 Q. And out of the \$38 million, how much went  
for  
22 salaries?

23 A. Probably -- my division, I will say 25 or  
30  
24 percent. Probably be about 30 percent by the time  
you  
25 figure benefits, the other employment costs.

19996

1 Q. What did the other millions go for, the  
2 two-thirds, approximately?

3 A. The rest, the administration division,  
which  
4 would be computers, overhead, rent, the usual things  
5 that you have in your business. I think that  
division

6 was about \$6 million. Our field operation was \$12  
7 million. Our Federal about the same. Our public  
8 affairs about \$13 million. That is sort of a mix.

9 MR. ROSENBLATT: Line 16 on Page 54.

10 Q. Out of the budget, pre-reorganization, did  
11 any of that money go for political contributions?

12 A. No. We would have a PAC. We would make  
13 honorarium contributions. But that would be it. And  
14 in those states where it's legal to make a corporate  
15 contribution, it would be done there.

16 I think there is about 20 states that have  
17 that.

18 MR. ROSENBLATT: Page 55, Line 17.

19 Q. Who is the head of the PAC?

20 A. The PAC Committee was a fellow named Bob  
21 Lewis, was the head of my Federal relations division.  
22 And Ralph Vinovitch would be on the PAC Committee.

I'm

23 not sure. Maybe another person on the PAC.

24 It would be people in my Federal relations  
25 division.



19997

1 Q. But, of course, Lewis and Vinovitch, the  
2 people that run the PAC, are employees of TI?

3 A. Yes, sir.

4 Q. As a practical matter, does the PAC have an  
5 office separate and apart from the TI office?

6 A. No.

7 Q. It is really within the framework of TI?

8 A. Yes, sir.

9 MR. ROSENBLATT: We go to Page 57, Line 2.

10 Q. Who does TI's PAC make most of its  
11 contributions to, as a practical matter? Members of  
12 Congress, to senators?

13 A. It would be members of Congress. We do not  
14 have a state PAC. We make no political contributions  
15 to the state. It is all Federal level.

16 Q. It is 100 percent at the Federal level?

17 A. Yes, sir.

18 Q. I may not be pronouncing his name  
correctly,

19 the former congressman who is now with TI -- Whitley,  
20 is that his name?

21 A. Now with TI?

22 Q. Yes.

23 A. Whitley.

24 Q. My understanding is he has an office at TI?

25 A. Yes.

19998

covering

1 Q. What does he do for you?

2 A. He is our legislative representative

3 Congress. He is a consultant hired for that purpose.

4 Q. Is he paid a salary by TI?

5 A. He is on a consulting contract with us. He  
6 is not a salaried employee. He is not an employee as  
7 such. He gets a contract.

8 MR. ROSENBLATT: Line 9 on Page 58.

9 Q. Now, he was a member of the House of  
10 Representatives from what state?

11 A. North Carolina.

12 Q. And for how long, about?

13 A. Say, ten years. I'm not sure.

14 Q. Do you have frequent contact with him?

15 A. Yes. I see him on a weekly basis.

16 Q. Is he the Tobacco Institute's designated  
17 person to testify before congressional committees?

18 A. He has testified on our behalf. Depending  
on

19 the subject matter, maybe other people would testify.

20 Q. Would you figure, though, that he has  
21 testified before committees of Congress more  
frequently

22 than any other member of TI?

23 A. During my tenure, yes, that would be the

24 case.

25 Q. How long has he been with the Tobacco

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1 Institute?

2 A. I would estimate six years.

3 Q. Is TI his only client?

4 A. Yes.

5 Q. How would you characterize him? You say  
he's

6 not exactly an employee, but he has an office at TI.

7 You are his only client. How do you characterize  
this?

8 A. It is strictly as a consultant. Mr.  
Whitley

9 is in his late 60s, or maybe middle 60s. He is not  
10 interested in building, I don't think, building a big  
11 business at that stage in his life. Though, he is  
12 certainly good, a very respected man.

13 Q. What is his area of expertise from TI's  
14 standpoint?

15 A. Having been a member of the congressional  
16 staff and then having been a congressman, he really  
17 understands, from a staff point of view and also as a  
18 member of Congress, what they expect.

19 Q. How to be an effective -- how to be an  
20 effective witness, that type of thing?

21 A. That's right.

22 Q. He knows the ins and outs of the political  
23 system, obviously?  
24 A. Yes.  
25 Q. And that's really his value to TI?

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20000

1 A. Yes.  
2 Q. How often do you personally have occasion  
to  
3 meet with or interact with Federal political  
officials,

4 the House, the Senate?  
5 A. I'll meet him or see him at a social  
6 function, or something like that, on a weekly basis.

7 Q. Are you social friends with any member of  
8 Congress?

9 A. Yes, sir.

10 Q. Who would you consider to be your closest  
11 friend in Congress? And if there are a few that are  
12 about the same level of closeness, tell me.

13 A. They are all about the same. Washington,  
14 have you met my best new friend?

15 Q. I have heard that.

16 Who are some of your best new friends or  
old  
17 friends?

18 A. Old friends, people from my own home state,  
19 Wyoming. Congressman from Michigan I'll play golf  
with

20 from time to time. See a lot of them at different  
21 events, things like that.

22 Q. Do you play golf with any U.S. Senator?

23 A. Yes, I have.

24 Q. Who?

25 A. Senator Don Nichols from Oklahoma, Senator

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That

1 Burns from Montana, Senator Wallop from Wyoming.

2 is a few.

3 MR. ROSENBLATT: Page 66, Line 20.

division

4 Q. I would like you to go through each

5 of TI and tell me the top person, top two or three  
6 people in each division.

7 A. Under my present organization today?

8 Q. Before the reorganization.

9 A. Before the reorganization.

that

10 My administrative officer is Bill Adams,  
11 senior vice president in charge of that. He is in

12 position now, so it is before and after.

Bob

13 In the Federal relations division, it was

14 Lewis that was the senior vice president in charge of  
15 that. Charlie Whitley will be coordinating that  
16 activity.

17 State relations, it was Curt Mulgreen, and  
18 that is before and after.

19 In public affairs, it is Susan Stunts,  
20 before, and now after it is Walter Whitson.

21 Q. Susan Stunts was let go?

22 A. Yes. And Brennan Dawson before and after.  
23 Those are the top people.

24 Q. And that covers all of the divisions?

25 A. Yes.

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1 Q. What division, if any, has been done away  
2 with since the reorganization?

3 A. No division has been done away with.  
4 Departments within the division have been done away  
5 with.

6 MR. ROSENBLATT: Page 68, Line 12.

7 Q. You think it is fair to say that the main  
8 purpose of TI is to fight legislation, either at the  
9 Federal or state levels, which the industry perceives  
10 as being harmful to it as an industry, such as

smoking

11 bans?

obviously

12 A. Well, one of our functions at TI is  
13 legislative, like taxes. It is very important to us.

14 Advertising bans, state and Federal smoking  
15 bans.

any  
16 Q. Well, TI will fight and oppose any bans,  
17 proposed ban at any level, where, for example,  
18 legislation is proposed to ban smoking in  
restaurants,  
19 to ban smoking in public buildings. That is the kind  
20 of thing that TI will always oppose, isn't it?  
do 21 A. Complete bans, we would oppose it. But we  
22 try to offer compromises and work it out so both the  
23 smokers and the nonsmokers are accommodated.  
24 Q. What was your role in the ban on -- the  
25 smoking ban on airlines?

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1 A. The Tobacco Institute's role?  
2 Q. Yes.  
3 A. The Tobacco Institute presented testimony  
4 before -- was it the CAB at that time? I can't  
5 remember who was in charge. We would have given the  
6 position of the tobacco industry on the smoking ban.  
7 MR. ROSENBLATT: Page 70, Line 7.  
8 Q. But, I mean, specifically, my question, you  
9 would accept the proposition that most Americans  
10 believe cigarette smoking causes cancer and other  
11 diseases?  
12 A. Yes.  
13 Q. The tobacco industry's position is, you

know:

14 We don't know if it does.

15 A. That's correct.

16 Q. And the tobacco industry's position with  
17 respect to environmental tobacco smoke is that  
18 environmental tobacco smoke is not a problem, is not  
a health problem?

19 A. That is what we feel, yes.

20 MR. MARTINEZ: 73, Line 25.

21 MR. ROSENBLATT: You heard that. Page 73,  
22 Line 25.

23 Q. Have you met Clinton, President Clinton?

24 A. Yes, sir.

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1 Q. In what context?

2 A. When he was governor, I knew him then.

3 Q. How well did you know him?

4 A. Would go to a democratic meeting which he  
5 would be a speaker, compliment him on his

presentation,

6 yes.

7 Q. Have you ever been in a social context with  
8 him, have dinner with him, where you were at the same  
9 table, in the same room?

10 A. Yes, sir.

11 Q. You have been in a situation where you had



12 dinner with him at the same table?

13 A. Well, stand-up hors d'oeuvres, more grazing.

14 Q. You got to talk to him?

15 A. Right.

16 MR. ROSENBLATT: Page 75, Line 1.

17 Q. How about -- how about any other president?

18 The same question. Did you know Bush?

19 A. Yes. I knew Bush.

20 Q. In what context?

21 A. Same context. Part of my job, I guess, here

22 in Washington is to know different people.

23 Q. Were you ever one-on-one with Bush in a

24 conversation?

25 A. Yes.

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1 Q. And where was that? What was the context of

2 that one-on-one situation?

3 A. His daughter's wedding would be one.

4 Q. You were invited?

5 A. Yes. Going through a receiving line: How

6 are you doing, Mr. President, is one-on-one.

7 MR. ROSENBLATT: Never happened to me.

8 Q. It seems -- it seems to me, to be invited to

9 his daughter's wedding, there would have been some  
10 background for that invitation. Maybe not.  
11 A. Well, I knew the groom who was marrying his  
12 daughter.  
13 Q. You were closer to that side of the family?  
14 A. Yes.  
15 Q. What is his name, the young man who married  
16 Bush's daughter?  
17 A. Bobby Cook.  
18 Q. Where did you know him from?  
19 A. I knew him when I was a kid, the  
20 neighborhood. Knew his father and mother.  
21 Q. Any other social occasions with Bush?  
22 A. Receptions.  
23 Q. How about Reagan or Carter?  
24 A. Both Reagan and Carter. Social functions  
25 with them.

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1 Q. Ever one-on-one with them?  
2 A. The same type of one-on-ones I talked  
about.  
3 Social. Say how are you doing? You are doing a  
great  
4 job. Regular schmoozing, I guess.  
5 Q. Have you ever had any relatives or family  
6 friends who died of lung cancer?  
7 A. No.

the

8 Q. Have you ever had an employee, in all of

9 years you've been president of TI, that told you

10 something like this: I am not comfortable with the

11 tobacco industry's position on smoking and disease.

I

12 believe smoking causes cancer?

13 A. No.

adopt

14 Q. Are all staff members of TI required to

already

15 the tobacco industry's positions which you have

16 expressed?

17 A. No requirement. I'm not sure I understand

18 the question.

19 Q. Well, I assume that you would fire a person

20 who dealt with the public or dealt with the media and

21 said, you know: Look, I'm doing a job here, but I

22 really believe that cigarette smoking does cause

23 cancer. That person would not work for TI very long,

24 would he or she?

25 A. Well, I have never asked their personal

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1 opinion. If they were not willing to be an advocate

2 for the position, obviously --

3 Q. They would be gone?

4 A. -- they would be gone.

5 Q. Sure.

6 Are you aware of any medical doctor or  
7 scientist, who has no connection with the tobacco  
8 industry, who has, within the last seven or eight  
9 years, publicly stated that he or she does not

believe

10 that smoking causes cancer?

11 A. I'm not -- I'm not personally aware. I

have

12 read congressional testimony and things like that.

13 Do I remember specifically --

14 MR. ROSENBLATT: No. No. I think that's

it.

15 Stop there.

16 Okay. And then we go to Page 78, Line 18.

17 Q. If a prominent physician like a lung  
18 specialist, no connection with the tobacco industry,  
19 said tomorrow morning -- adopted the tobacco

industry's

20 position, that would obviously be great news for the  
21 tobacco industry. You would quote that guy

constantly?

22 A. There have been physicians that have made  
23 those statements before publicly, at Congress, for  
24 example, and it didn't even cause a ripple in terms

of

25 being picked up by the press. Those statements have

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1 been made in the past.

in

2 Q. Can you name me one physician or scientist  
3 the last five years, unconnected to the tobacco  
4 industry, who has publicly spouted the tobacco  
5 industry's line?

years.

6 A. I cannot name anybody in the last five  
7 I think there have been people who have said this.

name

8 Q. How about in the last ten years, can you  
9 an individual?

10 A. Not specifically by name, no, sir.

11 Q. Is cigarette smoking addictive?

12 A. No. I don't think they are addictive, no.

love

13 Q. Would you concede that there are a certain  
14 number of people who are smokers who would dearly  
15 to stop smoking, but are unable to?

a

16 A. I don't know. I think a lot of people say  
17 lot of things. It is sort of an overworked term:  
18 a videoholic or I'm a chocoholic.

I'm

19 Q. So you're telling me, it is really your  
20 belief that anyone who really wants to quit smoking,  
21 whether they have been smoking two packs a day for 30  
22 years or one pack a day for ten years, if they make  
23 decision to stop smoking, they can do it on their own  
24 without any help, and it is not addictive?

the

25 A. Yes. As I said, my wife has quit. I know

a

1 lot of people that quit.

2 Q. And you have never known anyone who I  
3 characterized before who was a smoker, wants to quit,  
4 hates the habit but can't? You never heard of anyone  
5 like that?

6 A. You hear people say different reasons. I  
7 guess it would have to be a psychologist or somebody  
8 that would have to comment on why they continue to  
9 a product.

10 MR. ROSENBLATT: We go to Line 25 on Page

11 Q. Considering your background in the liquor  
12 industry, you would agree that alcoholism is an  
13 that some people cannot conquer on their own?

14 A. That's true. There are some people that  
15 cannot. There is intervention by medical

16 Q. So you will concede and agree that alcohol  
17 can be an addiction?

18 A. I'm not a -- I don't know what constitutes  
19 addiction.

20 MR. ROSENBLATT: Page 82, Line 2.

21 Q. What mechanism do you have for determining  
22 whether your media representative people are doing a  
23 good job, responding to media inquiries and inquiries  
24 from the public in a manner you would consider  
25 satisfactory?

20010

a

like

nothing

lawyers

met

1           A.    When I read what they had to say in the  
2    press, if I thought they explained the industry's  
3    position, if I saw someone on Nightline, I would have  
4    take-away myself, if I thought they did a good job  
5    advocating our position.

6                    There is not anything formal or anything  
7    that, if I understand your question.  There is  
8    formal.

9                   MR. ROSENBLATT:  Page 83, Line 1.

10          Q.    Have you ever read a Surgeon General's  
11    Report?

12          A.    No.

13          Q.    How many times did you meet with your

14    in preparation for today's deposition, assuming you  
15    with them at all?

16          A.    Three or four times.

17          Q.    Which lawyers?

18          A.    Mr. Dym, Mr. Duke, Mr. Northrip.  I don't  
19    recognize the rest of them.  Are they on your side?

20          Q.    You didn't meet with me before.

21          A.    No.

22                   MR. ROSENBLATT:  Page 85, Line 18.

23          Q.    Do you ever have occasion to read articles

on

24 the issue of smoking and health, let's say in the  
25 Journal of the American Medical Association, the New

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1 England Journal of Medicine? You are laughing.

2 You don't want to know about it?

my

3 A. I don't want to know. I'll read excerpts

4 people prepare, but that is not what I put on my

5 number-one reading list.

for

6 Q. You do not have anyone designated at TI,

7 example, if a significant article comes out in a

8 technical journal, or a medical journal, to put it in

9 understandable language for you?

will

10 A. Obviously a Surgeon General's Report, I

11 get an excerpt, what is the meaning.

12 Q. A couple-page excerpt?

13 A. Just a memorandum.

14 MR. ROSENBLATT: Page 87, Line 19.

15 Q. I'm not asking this question in a wise-guy

16 sense. But I'm asking it in the sense of the tobacco

issues

17 industry's position, has been consistent on the

Certainly

18 of smoking and health for a number of years.

19 since you are president at TI.



20 A. On smoking and health?  
21 Q. Yes.  
22 A. Yes. I would say that's true.  
23 MR. ROSENBLATT: Page 90, Line 2.  
24 Q. As a practical matter, would it be brought  
to  
25 your attention every time a spokesperson for the

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1 tobacco industry employed by TI is quoted in the  
2 newspapers -- I mean, a national kind of newspaper,  
3 like the New York Times or the Wall Street Journal?  
4 A. I would know because I have clips that  
5 usually cover the Wall Street Journal, the Washington  
6 Post, and if there is something on the Tobacco  
7 Institute, yes, I would see that.  
8 Q. Do you read all of the clips?  
9 A. Skim them.  
10 MR. ROSENBLATT: Page 94, Line 3.  
11 Q. It would seem to me, as an outsider, in  
order  
12 for your media representative people to respond  
13 intelligently to media inquiries and public  
inquiries,  
14 they should certainly know what the Council for  
Tobacco  
15 Research does. And yet what I'm hearing from all of  
16 the people from TI, everyone acts as though they  
don't

17 know it exists, or if it exists, you don't know  
18 anything about the Council for Tobacco Research.

19 The question is, why is that? Can you give  
20 me some insight into that as to why there is not a  
21 relationship between the two organizations?

22 A. I don't know why. I really couldn't answer  
23 that. I think our spokespersons would use whatever  
24 source they felt would advocate their position.

25 I don't know why they would go from one

group

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1 to another group.

reason

2 Q. Wouldn't you agree that the underlying

the

3 for all of the proposed antitobacco legislation is  
4 health hazards presented by cigarettes?

you

5 A. I think a lot of it. The underlying, as

are

6 put it -- I think a lot of it would have to do with  
7 youth. To me anymore, a lot of the tobacco issues  
8 driven by youth issues.

9 Do we advertise? Do we raise taxes to stop  
10 young people and other people from smoking?

The

11 Q. But, of course, that is a health issue.

12 reason why people don't want kids to start smoking is  
13 because it's a health issue?

wouldn't

14 A. Maybe to some people. In my case, I

15 say that.

the

16 I think there are risks, that you wouldn't

17 want to put off those risks. I don't know what is

18 reason people would make the decision to smoke or not

19 smoke.

20 MR. ROSENBLATT: I've got on 99.

21 MR. MARTINEZ: 99 was out.

22 MR. ROSENBLATT: 99 is out, Judge?

23 THE COURT: I don't know. Let me take a

24 look.

25 MR. ROSENBLATT: Yes.

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1 THE COURT: Yes. The whole page.

2 MR. ROSENBLATT: Okay.

3 So Page 101, Line 12.

convince

4 Q. What would -- what would it take to

5 you that cigarettes cause cancer and other diseases?

6 The Surgeon General's Reports have not convinced you;

7 the many, many studies have not convinced you?

8 What would it take to convince you?

9 A. Me, as a layperson?

10 Q. Right.

11 A. I think all of us would like to know what

12 causes cancer, I guess -- the mechanism, what causes  
13 it, what sets it up.

14 MR. ROSENBLATT: Page 102, Line 5.

15 Q. When people say -- and quite frankly, I'm  
16 only aware of people in the tobacco industry saying -  
17 when people say it hasn't been proven that cigarette  
18 smoking causes cancer, I'm saying: Okay. What would  
19 it take to prove it to you?

20 A. To see the cause and effect. Like I'm

aware

21 of studies of inhalation where they tried to

replicate

22 cancer in smoking, and they haven't been able to do  
23 that.

24 MR. ROSENBLATT: Page 104, Line 9.

25 Q. Are you aware of any animal studies where

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1 cigarette ingredients have been rubbed on the back of  
2 mice, rats, other animals, that have produced tumors?

3 A. Am I aware? I'm aware of the specific  
4 studies. I have heard of research in that area that  
5 said there was a large concentration of nicotine

used.

6 MR. ROSENBLATT: Page 105, Line 1.

7 Q. I'm sure you have seen many advertisements  
8 that talk about low tar, lower tar. To you, do you

would                    9        have an understanding why the cigarette companies

                         10       stress that in their advertising? Who cares?

cigarettes            11                    What is the difference whether the

                         12       have 20 milligrams of tar or 2 milligrams of tar?

might                13                    Do you have an appreciation of why that

                         14       be?

                         15                    A.    No, I don't.

                         16                    MR. ROSENBLATT:    Page 106, Line 2.

                         17                    Q.    If I mention such phrases as the Scientific

the                    18       Advisory Board or the special projects division of

                         19       Council for Tobacco Research, does that have any

                         20       meaning to you at all?

                         21                    A.    No.

                         22                    Q.    To your knowledge, are any of the tobacco

                         23       companies that are members of TI doing independent

                         24       research on any issues relating to causation?

                         25                    A.    I don't know.

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                         1                    MR. ROSENBLATT:    Page 107, Line 23.

                         2                    Q.    Who takes the minutes of the executive

board                3       meetings?

                         4                    A.    Stanley Timco, attorney, Covington and

                         5       Burling.

6 MR. ROSENBLATT: Page 109, Line 2.

7 Q. Who is on the budget committee?

8 A. You mean by name?

9 Q. By name.

10 A. Harry Steele with Philip Morris; Al  
Peterson

11 with Lorillard; Anderson with RJR.

12 Q. Who is on the board of directors of TI?

13 A. The board, you mean, by name? Individuals  
or

14 are you talking about the executive committee or the  
15 board?

16 Q. Let me understand the distinction, if any,  
17 between the executive committee and the board of  
18 directors.

19 Are they one and the same?

20 A. The executive committee obviously are  
members

21 of the board, but there are board members that are  
not

22 on the executive committee.

23 MR. ROSENBLATT: Line 24 on Page 109.

24 Q. As opposed to the Class A members?

25 A. Class A members are cigarette  
manufacturers.

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1 Q. And the executive committee is made up, as  
I

2 understand it, solely of the presidents and CEOs of

the

3 cigarette manufacturers?

4 A. The presidents. Or each company has two  
5 members, and they are designated. One may be the  
6 general counsel. One may be the public affairs  
7 officer.

8 The other could be Federal relations  
9 representative that has changed over time.

10 MR. ROSENBLATT: Page 111, Line 21.

11 Q. Who is that?

12 A. Jim Johnston was the president of RJR. And

government

13 B. Ogelsby, who is here in Washington, is a  
14 relations person for RJR.

deposition

15 MR. ROSENBLATT: That's it on this  
16 of Mr. Chilicote.

17 THE COURT: Okay. Thank you, sir.

18 MR. ROSENBLATT: Should I go ahead with  
19 the --

20 THE COURT: Let's see. We have one more to  
21 go. Do you want to continue on, or do you need a  
22 break? Okay. Take a break.

23 (The jury exited the courtroom.)

24 (A brief recess was taken.)

25 THE COURT: Okay. Where are we?

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matter

1 MR. MARTINEZ: Judge, can I address a

2 with you? I'm here. We don't need to get close.

3 THE COURT: Within arm's reach.

get

4 MR. MARTINEZ: Yes, sir. I don't want to

5 within arm's reach.

6 THE COURT: Which one?

7 MR. MARTINEZ: Judge, what I wanted to talk

8 to you about is this next deposition, which I believe

9 is of Thomas Lauria.

10 THE COURT: Lauria. Okay.

11 MR. MARTINEZ: As you know, since you have

you've

12 reviewed this, and you will be reviewing -- and

13 reviewed one other one, the same outline was used in

14 asking the questions. The same basic questions were

15 asked of each of these people, and they got the same

16 answers.

17 They talked about lobbying. They talked

18 about the fact that they do not believe causation has

19 been established. They talked about the fact that TI

20 opposes bans. They discussed ETS at length.

on

21 They talked about how many calls they get

TI.

22 an average day. They talked about the hierarchy of

you

23 Your Honor, if these were live witnesses,

exactly

24 couldn't bring four or five witnesses in to say

redundancy.

25 the same thing. We've reached the limit of



20019

repeated  
jury  
significance.

1                   Now, Your Honor, when something gets  
2                   often enough, it takes a life of its own, and the  
3                   starts thinking that it has some special  
4                   That's why courts do not permit redundant and  
5                   repetitious testimony. They don't permit people to  
6                   keep testifying as to cumulative evidence, because it  
7                   is prejudicial.  
8                   And in this instance, it clearly is  
9                   prejudicial. It has reached a point -- as I say, two  
10                  is fine. But four or five saying exactly the same  
11                  thing.  
12                  You have read these, and you haven't read  
13                  every line, obviously, because there were some that  
14                  were not objected to, but the testimony is the same  
15                  both of the ones that we have heard and in both of  
16                  ones that we have not yet heard.  
17                  And I would suggest that it is cumulative,  
18                  repetitious and has become prejudicial.  
19                  THE COURT: Let me see. Chilicote. What  
20                  I do with it?  
21                  What was his position?  
22                  MR. ROSENBLATT: He was president, Judge.  
23                  THE COURT: He was president.  
24                  MR. ROSENBLATT: He was president from --

in  
the  
did

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1 president. And Lauria is --

2 MR. ROSENBLATT: No, no. Lauria is the  
3 assistant to the --

4 THE COURT: Well, so is she.

5 MR. ROSENBLATT: Yes. She is one.

6 MR. MARTINEZ: Vice president.

7 MR. ROSENBLATT: She has a bigger job than  
8 Lauria.

9 THE COURT: Right. He was the assistant --  
10 Lauria was the assistant, but they all did the same  
11 thing.

12 MR. ROSENBLATT: That's one of the points.

13 You know, we went over this deposition for  
14 close to an hour. Obviously this is --

15 THE COURT: I know. That's not --

16 MR. ROSENBLATT: This is an afterthought on  
17 Mr. Martinez's part. He never mentioned this. He's  
18 realizing, as he sits there and listens, he says this  
19 hurts and he wants to put a stop to it.

20 Part of our -- part of our reasoning is,  
21 obviously the Tobacco Institute is the arm, the  
22 propaganda arm, the lobbying arm, the public

relations

23 arm of all -- of all of these companies. It occupies

a

24 very, very central position.

25 And for all of these people who are in high

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misrepresentation,  
it  
1 positions, not one of them, you know, really knows  
2 anything. That pattern and that party line is very  
3 significant on the fraud conspiracy,

4 because it's our position that it is a deliberate --

5 is a deliberate distortion of the truth. And this is  
6 what they've been selling the public since they were  
7 formed in the 1950s.

8 And, you know, Lauria's deposition is not  
9 going to take very long. And then there's Walker  
10 Merryman, and that's it for the Tobacco Institute.  
11 It's not a lot.

12 MR. MARTINEZ: They've also designated  
13 Kornegay for the next few days.

it's  
client.  
14 But, Your Honor, it isn't an afterthought.  
15 There are other parts of my body getting numb, and  
16 from listening to this because it's duplicative and  
17 repetitious and unnecessarily prejudicial to my

18 MR. ROSENBLATT: It's not unnecessarily  
19 prejudicial. It just simply outlines the position of  
20 the Tobacco Institute. They're different -- Kornegay

the

21 served before Chilicote did. And it's obviously part  
22 of our case, Judge, to show this pattern, that it's  
23 same exact situation.

24 And obviously, when someone like Chilicote  
25 shows that he has access to President Clinton, he has

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hear

1 access to President Bush, he plays golf with  
2 Congressmen, it's all different. It's not all the  
3 same. But it presents a picture.

depositions.

4 And this jury, you know, is entitled to  
5 the picture, and we're not dwelling on this. Your  
6 Honor has cut out large portions of these

of

7 We haven't designated that much. And out  
8 our designations, you know, much is out.

9 And this is -- this is simply a  
10 representative sampling of some of the Tobacco  
11 Institute people.

have

12 THE COURT: Well, I assume they wouldn't  
13 four people in the same job at the same time.

14 MR. ROSENBLATT: They all have -- they all  
15 have different positions.

16 THE COURT: Different functions.

17 MR. ROSENBLATT: And sometimes you would,

18 Judge.

19 THE COURT: All right.

20 MR. HEIM: But the question --

21 THE COURT: Overrule the objection.

22 MR. HEIM: Your Honor, I have a slightly  
23 different issue. I was going to say something about  
24 the last, but I'll pass it since Your Honor has

ruled.

25 My -- while I join with Mr. Martinez

because

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same 1 I do think it's cumulative and the same questions,

2 answers, and I don't think -- I think that it can be  
3 prejudicial, that kind of repetition. But I have a  
4 different request of Your Honor. That is, I'd ask

Your

5 Honor to at least inform this jury that the ETS  
6 testimony in this case, because there's been more of

it

7 in these last two depositions than we've had at any  
8 other part in this case -- Your Honor has kept most

of

9 it before this -- is not part of anything that

belongs

10 for their consideration.

11 The reason there's so much of it of course

is

12 that these depositions were taken in Broin.

13 THE COURT: In Broin.  
14 MR. HEIM: But they've now heard it and  
they  
15 will hear it again in the next two depositions, as  
16 well. Positions on ETS and the science of ETS are  
not  
17 relevant here. And I think the jury should know  
that.  
18 THE COURT: I don't know if there was that  
19 much.  
20 MR. ROSENBLATT: Very little.  
21 MR. HEIM: Well --  
22 THE COURT: The reason I kept it in is  
23 because it was a little difficult to get it out and  
24 make sense of the next question and the follow-ups.  
25 And that's where the problem came in.

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1 MR. HEIM: Well, it seemed to me that just  
2 listening, as I was, that there was a fair amount of  
3 ETS. And however much there is and will be in the  
next  
4 two depositions or three depositions, all in the  
Broin  
5 case, I think the jury ought to know that that's not  
6 part of this case. And if they hear about it because  
7 it had to do with some other case --  
8 MR. ROSENBLATT: Well, it is part of the  
9 case, to the extent of showing that any time

is

10 information comes out from any independent scientific  
11 source, which is anti the tobacco industry position,  
12 the tobacco industry basically says that the science  
13 untrue.

14 And to that extent -- obviously,  
15 environmental tobacco smoke is not an issue in this  
16 case on the issue of causation or addiction, but it  
17 is -- and that's why I believe Your Honor has left it  
18 in on a very limited basis.

Surgeon

19 They reacted to the -- to show that they  
20 react to the EPA report on secondhand smoke in  
21 precisely the same fashion as they react to the

are

22 General's Reports and other science on secondhand  
23 smoking; that their tactics, that their techniques

or

24 the same whether you're dealing with active smoking  
25 passive smoke.

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argument

1 So in that sense I think it's relevant.

2 MR. HEIM: Your Honor, I think that

far

3 proves too much because the science of ETS, the level  
4 of science and the level of scientific investigation  
5 into ETS, as I understand it, is far different and  
6 less, as subsequent events have proven, as it is with

7 tobacco smoke investigations and science generally.  
8 So, it's a different level. It's a  
different  
9 thing.

10 THE COURT: I don't think we focused on  
that.  
11 I don't think it became a focal point of the  
testimony.

12 MR. HEIM: I mean --

13 THE COURT: I'll keep it in mind as we go  
14 through this.

15 MR. HEIM: The jury will not know, for  
16 example --

17 THE COURT: What do you want me to tell  
them?

18 MR. HEIM: Well, I would simply tell them  
19 you'll hear some things in these depositions about  
20 environmental tobacco smoke and you should know that  
21 that's not part of this case. Environmental tobacco  
22 smoke is not part of your case and shouldn't be  
23 considered by you.

24 MR. ROSENBLATT: It's our position, Judge,  
25 that that kind of instruction is looking for trouble,

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1 because -- the simple truth of the matter is that  
when

2 the time comes, Mr. Heim is going to tell that to the  
3 jury. I'm not going to be arguing environmental



4 tobacco smoke.

5 It's a nonissue. And to raise it -- to

start

6 saying to the jury, well, you know, you've heard this

7 and this is the reason, it's not a good practice.

It's

8 really looking for trouble.

9 THE COURT: I don't think there's been

enough

10 mentioned about ETS to create anymore problems.

11 I appreciate your objections. They're

12 overruled.

13 All right. We're going to do Lauria now?

14 MR. ROSENBLATT: Yes, Judge.

15 THE COURT: Okay. Let's bring them out.

16 (The jury entered the courtroom.)

17 THE COURT: Okay. Have a seat.

18 All right. There's one more coming up.

19 MR. ROSENBLATT: This is the deposition of

20 Thomas Lauria, L-A-U-R-I-A, taken in Washington, D.C.

21 November 18, 1993.

22 (The deposition of Thomas Lauria was read

as

23 follows:)

24 MR. ROSENBLATT: Beginning on Page 4.

25 Q. Tell me your name, please, and your

address.

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1           A.   Thomas Lauria.  I live at

2   [DELETED].

3           Q.   How far is [DELETED] from D.C.?

4           A.   Just across the Potomac River.

5           Q.   By whom are you employed?

6           A.   The Tobacco Institute.

7           Q.   In what capacity?

8           A.   I'm assistant to the president.

9           Q.   How long have you been assistant to the  
10  president?

11          A.   Since October of 1989.

12          Q.   Which president?

13          A.   Samuel Chilicote.

14          Q.   When did you start with the Tobacco  
15  Institute?

16          A.   At that time --

17               MR. ROSENBLATT:  We go to Page 10, Line 18.

18          Q.   How does that come about with the Tobacco  
19  Institute?  You made it known to them you were

looking?

20          A.   A friend of mine in media made it known to

me

21  that a spokesperson position had opened up there, and

I

22  thought it might be interesting.  It certainly was  
23  worth an interview.

24          Q.   Who interviewed you?

25          A.   Brennan Dawson.

of

11.

in

there.

maybe

1 Q. Did she hire you?

2 A. Eventually. I had to go through a series  
3 interviews leading up to that.

4 MR. ROSENBLATT: We go to Line 12 on Page

5 Q. What appealed to you about the job,  
6 considering your background, your varied background,  
7 which seems to me, as an outsider, this was much more  
8 constricting than what you had done before, but maybe  
9 I'm wrong?

10 A. I think it gave me a chance to participate  
11 public affairs, raise my profile.

12 Q. What does the assistant to the president do  
13 with the Tobacco Institute on a daily basis?

14 A. I handle media inquiries and some public  
15 inquiries.

16 Q. I took two depositions before you today,  
17 Brennan Dawson and Walker Merryman; and my impression  
18 is that is what they do as well.

19 A. That's correct.

20 Q. So you all do pretty much the same thing?

21 A. We form the media relations department

22 Q. I'm puzzled as to why you have the title  
23 "assistant to the president." You must have some  
24 relationship to the president that they don't, or  
25 not?

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1           A.    Not really.

2           Q.    So why do you have the title?

3           A.    It is what they gave me.

4           Q.    How is it determined whether you or  
Merryman  
calls,  
whether

5           or Dawson -- NBC calls, some paper out in Peoria

6           how is it determined whether you take the call,

7           she takes the call, whether Walker Merryman takes the

8           call, or is it just --

9           A.    On all media, we take the calls. I think  
on

10          some -- some media, there are personal contacts.  
Some

11          reporters like to talk to Walter; some to Brennan;  
some

12          to myself.

13                   MR. ROSENBLATT: Page 13, Line 3.

14          Q.    Is that like 90 percent of the job?

15          A.    Yes.

16          Q.    Responding to media inquiries and inquiries

17          from the public?

18          A.    Yes.

19          Q.    What is the other ten percent of the job?

20          A.    I guess that would be speaking engagements.

21          Q.    Do you have more contact with the president

22          than Merryman or Dawson?

23          A.    No.

inquiries 24 Q. If you wanted to review all of the  
see 25 you responded to, let's say in 1993, just wanted to

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1 who had called you, who you had spoken to, to remind  
2 yourself, is that information available to you at the  
3 Tobacco Institute?

4 A. Yes. There would be activity reports.

say, 5 Q. In other words, if someone calls, let's

6 just an individual, you speak to them, they ask a  
7 couple questions, you have a seven- or eight-minute  
8 conversation, that is documented on an activity  
report?

9 A. As a number.

10 Q. Well, what do you mean, as a number?

11 A. A call from an average caller would be  
12 indicated as a public call from one to how many come  
in

13 that day.

14 Q. Do you write down or is there a record kept  
15 of the name of the individual calling?

16 A. I don't believe there is, no.

17 Q. Do you document any kind of file as to the  
18 substance of the conversation?

19 A. No.

20 Q. You've been doing this for a while. If I

21 were to ask you: What do most people -- forget the  
22 media, for the minute. As to members of the general  
23 public, what are the most frequent kinds of questions  
24 you get?

25 A. Concern about taxation and concern about

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1 smoking restrictions.

2 Q. Are you a smoker?

3 A. No, I'm not.

4 Q. Ever?

5 A. I smoked for a day or so when I was a  
6 teenager.

I'm

7 MR. ROSENBLATT: I just want to make sure

8 not skipping anything.

9 Page 22, Line 6.

cause

10 Q. Have you ever made an attempt to study the  
11 issue of whether or not smoking causes or doesn't  
12 cancer?

13 A. Not in any discernible detail, no.

14 Q. But in your own mind, as an individual, you  
15 are satisfied smoking does cause cancer, to a certain  
16 number of people?

been

17 A. No. I see smoking as something that has

may

18 identified by studies as posing a risk factor. It

19 cause certain health problems.

20 Q. It may cause cancer?

21 A. That's one of the concerns that are  
22 frequently mentioned, yes.

23 Q. And you just don't know? I mean, you have  
24 never made an attempt to find out whether it does or  
25 doesn't?

it

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1 A. I think it is a very well-documented fact  
2 that the public understands that cigarette smoking is  
3 risk factor for that.

a

4 Q. I'm not asking if it is a risk factor. I  
5 asking, is it a well-documented fact that smoking  
6 causes cancer in people who smoke a lot, over a  
7 of years?

am

8 A. I don't think so.

9 MR. ROSENBLATT: Line 23, Page 23.

10 Q. Have you ever read a Surgeon General's  
11 Report?

12 A. Yes, I have. 1986, 1989.

13 Q. Why those two, in particular?

14 A. '86 dealing with environmental tobacco

smoke

15 was of particular interest to me, and '89 because it

16 kind of summarized all of the anniversary reports.

17 Q. Why was the environmental tobacco smoke of  
18 particular interest to you?

19 A. It was a budding controversy. As a  
20 spokesperson, I wanted to understand what we were  
21 talking about.

22 MR. ROSENBLATT: Line 17 on Page 24.

23 Q. Is it your understanding there is any real  
24 division of opinion in the scientific community about  
25 whether or not cigarette smoking causes cancer or

heart

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1 diseases and other diseases?

2 A. I understand that the Federal health  
agencies

3 are unified in taking a stance against tobacco.

4 Q. What about all of the thousands of studies  
5 that have done -- that have been done since the '50s  
on

6 the issue of cigarette smoke causing cancer and other  
7 diseases?

8 A. I would imagine those studies would prompt  
9 Federal agencies to take actions they have taken.

10 MR. ROSENBLATT: Page 26, Line 5.

11 Q. Are you familiar with the warnings that  
12 appear on packages of cigarettes?

13 A. In general, yes.



14 Q. What do the warnings say that mention the  
15 word "cancer"?  
16 A. I don't have it committed to memory.  
17 Q. What do you think it says? What is the  
18 thrust of it when it mentions cancer? What is the  
19 warning?  
20 A. I don't have it memorized.  
21 Q. Does it say that smoking can cause cancer,  
22 that it does cause cancer?  
23 A. I'm not certain.  
24 Q. Big difference from the standpoint of the  
25 consumer, wouldn't you think, if the warning said:

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1 Cigarette smoking may cause cancer, or it says: It  
2 causes cancer?  
3 A. I think the risk links to smoking are so  
4 universally known, I'm not sure what the impact is on  
5 consumers.  
6 MR. ROSENBLATT: Page 29, Line 19.  
7 Q. What is tar, do you know?  
8 A. I don't have a clear scientific definition  
9 what it is.  
10 Q. Even an unclear, layman's definition of it?  
11 A. I'm not certain.  
12 Q. What do you think the significance is that

of

milligrams

13 you see an ad and it says: The brand has 17  
14 of tar, this brand has 3 milligrams of tar, is that  
15 supposed to mean anything to me, as a consumer, that  
16 one is better than the other, one tastes different  
17 the other, or what?

from

18 A. I don't think it means anything to a  
19 nonsmoker. I think perhaps to a smoker, there is a  
20 taste differential that is indicated.

21 MR. ROSENBLATT: Line 18, Page 30.

22 Q. Why do they do it? Why do they talk about  
23 low tar? Who cares?

24 A. I understand there is a consumer preference  
25 for a wide range of both prices and flavor

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1 availabilities.

if

2 Q. What does low tar have to do with flavor,  
3 anything?

understand,

4 A. As a nonsmoker, I don't know. I  
5 from smokers, they taste lighter.

6 MR. ROSENBLATT: I have 38, Line 18.

7 Q. What is the Council for Tobacco Research?

8 A. An organization based in New York.

9 Q. What is it?

to

10 A. I'm not very familiar with it.

11 Q. Do you know what it does, what it purports

12 do?

13 A. I understand it funds research.

14 Q. Do you know what kind of research they do?

15 A. Well, I would presume the Council for

Tobacco

16 Research would fund tobacco issues. I'm not very

17 familiar with them.

18 Q. Have you ever seen any research report that

19 came out of the Council for Tobacco Research?

20 A. I recall seeing them in our library at the

21 Tobacco Institute.

22 Q. Do you recall what they concluded, what the

23 substance of any of those reports were?

24 A. They were far too technical for me. I

25 glanced at it and put it back.

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Council

1 Q. Do you know anyone who works for the

2 for Tobacco Research?

3 A. No, sir.

4 Q. Have you ever heard of Dr. James Glenn?

5 A. No.

6 MR. ROSENBLATT: Page 42, Line 6.

7 Q. Can you name one medical doctor, one

8 scientist in the entire United States of America,  
9 unconnected with the tobacco industry, who takes the  
10 position publicly that it hasn't been proven that  
11 cigarette smoking causes cancer and other diseases?

12 A. No. I couldn't give you a specific name,  
13 although I am aware there were and are medical  
14 professionals who make that claim.

15 Q. Who are they? From what school are they?  
16 Who do they work for?

17 A. As I stated, I couldn't name them.

18 Q. I don't need their name. Tell me, where do  
19 you read an article?

20 What are you talking about? Are you  
telling  
21 me someone from a university -- you don't have to  
know  
22 his name -- who takes the position publicly, who is  
23 unconnected with the tobacco industry?  
24 MR. ROSENBLATT: Then you go to Line 2 of  
25 Page 43.

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1 A. Just in the affirmative. I understand  
there  
2 have been people who have testified well before I  
3 became involved in the industry on these matters.

4 Q. Has anyone said that since 1980?

5 A. I don't know.

6 Q. We know recently there was a smoking ban  
7 against smoking in all restaurants in Los Angeles.  
8 What did the Tobacco Institute do to try to influence  
9 the decision the opposite way?

10 A. I don't know.

11 Q. You weren't involved in that at all?

12 A. That's correct.

13 Q. Now, just so we will be understanding each  
14 other, you may not know the details with precision,

but

15 are you telling me you are even unaware there were

some

16 people employed by the Tobacco Institute who were  
17 involved in that issue?

18 A. That's correct.

19 Q. You just don't know?

20 A. I do not know the extent of any involvement  
21 with the Tobacco Institute in the most recent --

22 Q. What is the reason for the recent  
23 reshuffling, and a lot of people were fired, let go,

at

24 the Tobacco Institute?

25 A. I understand the reduction in force was

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1 necessitated by economic considerations.

2 Q. What does that mean? The member companies  
3 weren't willing to pay the monies to pay the

additional

4 people?

5 A. I don't know if I could characterize it as  
6 willing. I think there was just less money available  
7 to the Tobacco Institute. That is my understanding.

would  
8 Q. Who made the decision that these people  
9 go and these people would stay?

10 A. I don't know.

Tobacco  
11 Q. Who, other than the president of the  
12 Institute, would have the power to make that  
decision?

13 A. I don't know the decision-making process  
14 led to the selection of individuals.

15 Q. You don't know whether or not the  
16 and chief executive officers of the member companies  
17 had input into that decision?

18 A. I have no idea.

19 Q. How did that happen? One day you were at  
20 work and you heard 30 people were being fired or  
what?

21 A. An announcement was made on a day when I  
22 wasn't in the office.

23 Q. Who made the announcement?

24 A. I understand it was made by Bill Adams.

25 Q. You mean, he got on the loud speaker system

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1 or something, or he sent out a memo?

2 A. As was told to me, he visited the offices  
of  
3 those people that were no longer going to be  
employed.  
4 Q. And it all happened on one day, is that  
your  
5 understanding?

6 A. That was my understanding.

7 MR. ROSENBLATT: Line 17, Page 46.

8 Q. Do you know that according to the Centers  
for  
9 Disease Control, approximately 90 percent of lung  
10 cancer victims are smokers?

11 A. I'm not familiar with that statistic.

12 Q. Assuming that statistic to be true, do you  
13 think that's a coincidence?

14 A. I don't assume it to be true. I don't  
know.  
15 MR. ROSENBLATT: Page 47, Line 12.

16 Q. What percentage of lung cancer victims do  
you  
17 think are smokers?

18 A. I don't know if any are.

19 MR. MARTINEZ: It continues on Page 48,  
20 Line --

21 MR. ROSENBLATT: Line 4. Continue your  
22 answer on Line 4, Page 48.

23 A. I established I'm not a scientist, and I'm  
24 not in a position to come to those kind of  
conclusions.  
25 Percentages are far beyond my expertise.

20040

a

who

Page

office

1 Q. Without being a scientist and without being  
2 medical doctor, do you think the majority of people  
3 die from lung cancer are smokers or nonsmokers?

4 A. I don't know.

5 MR. ROSENBLATT: And we go to Line 24 on  
6 48.

7 Q. How does a man and woman on the street who  
8 are not scientists or doctors, who keep hearing from  
9 you people that it hasn't been proven that smoking  
10 causes cancer, how do they know? They are not  
11 scientists or doctors either.

12 A. I can't speak for everyone else.

13 Q. Can you speak for anyone else?

14 A. I don't know.

15 MR. ROSENBLATT: Page 55, Line 15.

16 Q. I'm saying, what is the reason that the  
17 Surgeon Generals have uniformly and unanimously come  
18 out against tobacco?

19 A. I interpret the Surgeon Generals, the  
20 of the Surgeon General as, after looking at studies  
21 that have statistically linked cigarette smoking as a  
22 risk factor for emphysema, lung cancer and heart  
23 condition, concluding that the public needs to be  
24 informed about that.

25 Q. And your job is to shoot holes in that and



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1 say it really hasn't been proven; it is a statistical  
2 linkage; there is no cause and effect. That's your  
3 accomplishment?

4 A. No.

5 MR. ROSENBLATT: Page 59, Line 8.

6 Q. Do you ever testify on Capitol Hill?

7 A. No. I have never testified.

8 Q. Before any congressional committee, either  
9 House or Senate?

10 A. That is correct. I have never testified.

11 Q. Who does the Tobacco Institute usually send  
12 to do that?

13 A. Former Congressman Whitley frequently  
14 testifies for us. Not exclusively, but frequently.

15 Q. Who else testifies for you?

16 A. It would depend on the issue.

17 Q. Well, who else would testify for you?

18 A. Economists, people.

19 Q. I mean, from the Tobacco Institute, who  
else  
20 would testify for you?

21 A. In my time, there is no one else in the  
22 Tobacco Institute that has testified.

23 Q. Only Whitley?

24 A. To the best of my knowledge.

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1 Q. What is the meaning of the title "assistant  
2 to the president"? Obviously, you are not the  
3 assistant to the president.

4 A. Inasmuch as I answer press inquiries on his  
5 behalf, we perceive that as assisting the president.

6 Q. In that sense, everyone assists the  
7 president.

8 Is there anything unique about what you do  
to  
9 give you that title?

10 A. Not in terms of my relationship with the  
11 president of TI.

12 Q. Does the president of TI smoke?

13 A. I don't know.

14 Q. Think. I assume you've seen him. You  
know.

15 A. I don't know if he smokes cigarettes. I  
16 vaguely recall he may smoke cigars. I'm really not  
17 certain.

18 Q. You have no recollection of ever seeing him  
19 with a cigarette?

20 A. Exactly.

21 MR. ROSENBLATT: Page 66, Line 19.

22 Q. Who is your immediate supervisor?

23 A. Brennan Dawson.  
24 Q. How many vice presidents are there at the  
25 Tobacco Institute?

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1 A. Approximately a dozen. I might be off.  
2 MR. ROSENBLATT: Page 73, Line 3.  
3 Q. What did you do to prepare for this  
4 deposition? Did you meet with lawyers?  
5 A. I met with counsel.  
6 Q. When?  
7 A. On three occasions.  
8 Q. How many counsel?  
9 A. How many lawyers?  
10 Q. Yes. How many lawyers?  
11 A. Usually three.  
12 Q. Who are the lawyers you met with?  
13 A. From Covington.  
14 Q. Give me the names.  
15 A. Bob, Paul, Herb.  
16 Q. Bob, Paul, Herb?  
17 A. Yes.  
18 Q. How long did you meet each time?  
19 A. A couple hours.  
20 Q. When were these meetings?  
21 A. Over the last couple weeks, I guess.  
22 THE COURT: That's it.

23 MR. ROSENBLATT: That's it.  
24 THE COURT: Okay. Conference time.  
25 (Discussion off the record.)

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discussing

it,

1 THE COURT: All right. We've been  
2 our time frame and scheduling and all that sort of  
3 business. That's my homework. And then after I do  
4 I've got to go talk with them and go through it.  
5 And so we're going to release you now so we  
6 can get some of this work done. Get you back here  
7 tomorrow at 10:00 -- 10:00 in the morning.  
8 We're going to meet, the lawyers and I,  
9 earlier than that. We're going to meet around 8:30,  
10 quarter to 9:00; go through some of this stuff.  
11 Hopefully we'll be through with what we have to do by  
12 the time you come in at 10:00.  
13 We'll take this hour to do it tomorrow  
14 morning and see what we can get done, if that doesn't  
15 upset you at all. I've got to keep you happy.  
16 (The jury exited the courtroom.)  
17 THE COURT: We have three jurors that have  
18 something to do Friday, doctors and appointments, and  
19 so forth. I said Friday is fine, so they can  
20 their appointments for Friday and it won't interfere

schedule

21 with our plans. That's good.  
22 Okay. Where are we at? We've got to go  
23 through Merryman, is that it?  
24 MR. HEIM: Yes. Which one are we doing,  
25 Merryman?

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1 MR. MARTINEZ: That's fine, Judge.  
2 THE COURT: Okay.  
3 MR. MARTINEZ: Judge, before we start on  
the  
4 specifics of Mr. Merryman's deposition, I would  
invite  
5 your attention most respectfully to Page 11, Line 23  
of  
6 Mr. Lauria's deposition, where Mr. Rosenblatt said:  
I  
7 took two depositions before you today, Brennan Dawson  
8 and Walker Merryman; and my impression is that is  
what  
9 they do as well.  
10 That's correct.  
11 So you all do pretty much the same thing?  
12 We form the media relations department  
there.  
13 And then he proceeds to spend the rest of  
the  
14 page proving that his job is virtually identical to  
15 Brennan Dawson and Walker Merryman.  
16 The next deposition we have up is that of

17 Walker Merryman. So I would submit that that is even  
18 further evidence -- and as we go through the  
19 deposition, it will be very clear that there are  
20 specific questions that are, again, repeated for the  
21 third time today.

22 MR. ROSENBLATT: That's how one establishes  
23 conflicts and credibility. And it's the position of  
24 the plaintiffs, Judge, that the Tobacco Institute, as  
25 it relates to the media and the public, is a total

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1 sham.

2 And by establishing -- and Merryman is in a  
3 much different position than Lauria, because he's  
been  
4 with the Tobacco Institute for many, many years, and  
5 when you -- even remembering our very first witness  
in

6 this case, Dr. Julius Richmond, said that he debated  
7 several times on national television programs Walker  
8 Merryman, whereas Lauria has never appeared on  
9 television. Lauria has never testified to any  
10 congressional committees.

11 And Walker Merryman has been a much more  
12 active, seasoned, elder spokesman for the tobacco  
13 industry.

14 MR. MARTINEZ: So maybe they should have

15 picked --

16 MR. ROSENBLATT: And in many --

17 MR. MARTINEZ: I'm sorry.

18 MR. ROSENBLATT: In many instances I'm  
asking

19 the same questions to establish the fact that none of

20 these people know anything. They don't read  
anything.

21 They don't know anything about the Tobacco Institute.

22 They don't know anything about Surgeon General's

23 Reports.

24 All they know is to repeat the big lie,  
that

25 it hasn't been scientifically proven that our product

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1 causes cancer. And it's very important in terms of

2 the -- that's one of the basic frauds of the tobacco

3 industry. They just repeat over and over again this

4 line.

5 And when you ask them: Name me a doctor  
who

6 agrees with you, they say: Oh, wasn't there --  
wasn't

7 there testimony 10, 15 years ago?

8 Boom. They never come up with a name.  
They

9 never come up with a name.

10 And obviously on cross-examination, where  
are

agreed

11 these people? I mean, obviously that would make a  
12 wonderful witness for the tobacco industry in this  
13 case, someone from a prestigious university who  
14 with their position. Apparently they can't find one,  
15 and it's very important for us to establish that.

bogged

16 MR. MARTINEZ: At the risk of getting

with

17 down into a circuitous argument that has nothing do

18 what we're talking about, what we're talking about,  
19 maybe he should have picked Walter Merryman as the  
20 person that he was going to bring in here to say:

How

21 do you respond to antitobacco articles, or how do you  
22 respond to questions?

23 He's already had three people come in and  
24 testify about that. He's already asked -- the only  
25 difference between Walker Merryman and the other two

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1 people is that Walker Merryman is a vice president.  
2 And he asks specifically: When you became vice  
3 president, did that change your duties in any way?

And

4 he said no.

thing,

5 So, all he's doing is exactly the same

6 dealing with requests and information and answering  
7 them and saying the same thing.



same

live

what

since

8 I would expect he could get all 30 people  
9 from the Tobacco Institute to come in and say the  
10 thing, if he wanted all 30 of them, but I don't think  
11 the Court would permit them to do so.

12 And if these people were being called as  
13 witnesses, you would have never permitted all of them  
14 to come in to testify to the same things.

15 If he wants to pull out the few things that  
16 are different, then we're talking about a different  
17 animal. This is not what we're doing here.

18 He wants to ask him all of the same  
19 questions, because he believes that the way that he  
20 asks questions is going to convince this jury that  
21 they're doing is improper. And that's not the proper  
22 way to do it.

23 THE COURT: Well, the answers are somewhat  
24 different. He's much more informed than the others.

25 MR. ROSENBLATT: Yes. He's been there

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1 '76.

2 MR. MARTINEZ: They should have called him  
3 first, Judge. I'd say this is now very cumulative.

I

4 will point out the specific cumulative nature of the

5 things as we go through the testimony.

6 THE COURT: All right. We'll go through  
it,  
7 and you can point it out.

8 Page 4, 22 to 25, no objection.

9 5, Line 1 through 5, no objection.

10 18 through 25, no objection.

11 6, 1 through 13, no objection.

12 Page 9, 24 and 25, no objection.

13 Page 10, 1 through 13, no objection.

14 Page 10, 22 through 25.

15 MR. MARTINEZ: Your Honor, at that point I  
16 would like to inject an objection to cumulative  
because  
17 that is exactly the same question and exactly the  
same  
18 answer that has been given both by two prior  
witnesses.

19 What is an average day?

20 A great deal of my time is responding to  
21 telephone calls from reporters who have inquiries on  
a  
22 wide variety of subjects.

23 You personally do that?

24 Yes, I do.

25 That's what all of them have said they do.

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1 THE COURT: Overruled.

2 Page 11, 1 through 4, and 20 through 25,  
3 overruled.

4 MR. MARTINEZ: Again, Your Honor, that is  
5 exactly what was told by the other people when they  
6 that sort of thing. It would be typical for us not  
7 respond. We will get guidance, and we'll attempt to  
8 respond.

9 Then the question on Page 7 has been asked  
10 each of them. They've gotten the identical answer  
11 each of the prior witnesses.

12 Who would you get the guidance from? Is  
13 there an inhouse scientific person?

14 Guess what? There still isn't an inhouse  
15 scientific person at the Tobacco Institute, and the  
16 answer is the same on every single one of them:

17 No, there is not.

18 Others have been asked and have said a  
19 consultant would read it and sometimes give us some  
20 input.

21 This is on Page -- I'm sorry; it's covered  
22 up -- Page 12 is exactly the same testimony that's  
23 given by two prior witnesses. It is cumulative.

24 THE COURT: Overruled, Page 12, 1 through

25 We go to Page 26 -- 25, actually.

1 26.

2 MR. MARTINEZ: Your Honor, that is exactly  
3 the same hypothetical question that was asked of all  
of  
4 the other ones. A reporter calls you and asks you if  
5 the warning is true.

6 Now, I would submit that it not only has to  
7 do with the repetitious and cumulative nature of it,  
it  
8 further has to do with preemption.

9 THE COURT: Overruled.

10 Page 26, 3 through 25.

11 MR. MARTINEZ: And, Your Honor, the same  
12 objection on Page 27.

13 THE COURT: Page 27, 1 through 25,  
overruled.

14 MR. MARTINEZ: Specifically on Line 18,  
where

15 the question is: Your bottom line answer to whether  
or  
16 not cigarette smoking causes cancer would be you  
don't

17 know whether it does or it doesn't? That is exactly  
18 the same answer that's been given each time.

19 THE COURT: Overruled.

20 Page 28, 1 through 25, overruled.

21 29, 1 through 25, overruled.

22 Page 30, 1 through 19, overruled.

23 MR. MARTINEZ: Again, he's asked if he  
knows

24 Dr. James Glenn on Page 49. None of them know

25 Dr. James Glenn, surprisingly enough, but that is

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1 clearly repetitious.

2 THE COURT: 31, Line --

3 MR. MARTINEZ: Again --

4 THE COURT: 3 through 25.

5 MR. MARTINEZ: Lines 18 through 23, in  
6 particular, specifically state they do not know what  
7 kind of research CTR does; none of them do. And I  
8 think that -- again, cumulative and repetitious.

9 THE COURT: Overruled.

10 32, overruled, 2 through 25.

11 33, top of the page, 1 through 3.

12 MR. MARTINEZ: That is further, Your Honor,  
13 argumentative. I don't think he should be permitted

in

14 court here to be asking a question:

15 It may or may not be responsible for either  
16 zillions of death or for zero deaths; you just don't  
17 know?

18 That is clearly an improper question, and

the

19 objection was made to it.

20 THE COURT: Overruled.

21 Page 33, Line 21.

22 MR. MARTINEZ: Your Honor, at the bottom of  
23 Page 33, Question 24, 25, that -- he has been asked  
24 that question before. He has answered that question

25 before. It is repetitious within this deposition;

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1 never mind he's asked the question of three other  
2 people.

3 He has clearly already answered that  
4 question, and what he is doing with this is he's  
5 arguing with him. He's not asking him a question for  
6 information.

7 THE COURT: Overruled. He answers the  
8 question on Page 34, a long answer.

9 MR. MARTINEZ: And on the bottom of 34, 35,  
10 Your Honor, he is again taking the position that TI's  
11 position provides a smoker with perfect  
12 rationalizations to continue to smoke by saying  
13 causation is not proven. That is, in our view, a  
14 violation of the preemption policy. It is also  
15 cumulative, in that he has asked each of them exactly  
16 the same question.

17 Actually, it's not even a question. He's  
18 made the same speech to each of the other two

witnesses

19 that causation -- that this is a rationalization to  
20 smokers, their position.

21 THE COURT: Overrule the objection.

22 36, overruled.

23 37.

24 MR. MARTINEZ: Again, he asks if he thinks  
25 that anyone who really wants to smoke, make up their

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1 mind and quit.

2 THE COURT: All right.

3 MR. MARTINEZ: It's cumulative. He's now  
the  
4 third person who is asked that opinion.

5 THE COURT: Overruled.

6 38, 6 through 21, no objection.

7 MR. MARTINEZ: There is no objection, but I  
8 would point out that it is his job responsibilities,  
9 which show that his job responsibilities are  
identical

10 to the two people who have already testified. I'm  
not

11 objecting to it; I'm just pointing it out to you.

12 THE COURT: Page 39, 1 through 6,  
overruled.

13 Page 40, 22, 25, no objection.

14 MR. MARTINEZ: No, sir.

15 THE COURT: 41, 1 through 4, no objection.  
16 5 through 23, overruled.

17 Page 43, Line 12 through 25, sustained.

18 Although you didn't object, but I assume you did.

19 MR. MARTINEZ: Yes, Your Honor. There was  
an

20 objection. I apologize if it wasn't marked.

21 THE COURT: 44, 1 through 19, sustained.

22 46, 15 through 19, overruled.

23 MR. MARTINEZ: The cumulative nature of the  
24 contributions.

25 THE COURT: 49, no objection, 15 through

22.

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1 51.

clear

2 MR. MARTINEZ: Again, cumulative. Very

3 that they have and do oppose that, and their

4 explanation has all been the same.

5 THE COURT: All right. Overrule the

9

6 objection, 17 through 25, Page 51, and Line 1 through

7 on 52.

8 56, Line 8 through 25.

He

9 MR. MARTINEZ: Again, repetitive nature.

10 has asked this question of all of their witnesses.

have

11 They are not scientists, and they've all seemed to

12 given him the same basic answer.

13 THE COURT: All right. Overruled, 56, 8

14 through 25, and 57, 1 through 23.

57

15 MR. MARTINEZ: Your Honor, I would also on

the

16 mention preemption, particularly with reference to



low

17 last speech disguised as a question, talking about  
18 tar and what is in the advertisement, because the  
19 advertisements do comply with Federal laws.

20 THE COURT: Overruled.

21 58, 1 through 4, overruled.

22 5 through 25 is sustained.

23 59, Line 1 is sustained.

24 Let's see. 1 and 2.

25 8 through 11 is repetitious. I agree with

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1 you. Sustained.

2 64, 13 through 25, overruled.

3 65, 1 through 10, overruled.

4 66, 7 through 25, no objection.

5 67, 1 through 20, no objection.

6 21 through 25 -- we're getting, again, into

out

7 this environmental ETS thing. I'm trying to figure

8 the best place to cut it.

9 MR. ROSENBLATT: But it just shows on

We

10 substance their position always is: We don't know.

11 don't know.

these

12 MR. HEIM: The science is different on

it's

13 two subjects, and it's not a fair comparison, and

all

14 not in this case.

15 THE COURT: Yes. I realize that, but --

16 right. 67 is okay, 21 through 25.

17 68, 1 through 8 is overruled.

18 What's this brochure?

19 MR. MARTINEZ: Don't know, Judge. I assume  
20 there was a brochure they were looking at, but it has  
21 not been marked.

here,

22 THE COURT: What are you talking about

23 this brochure? On Page 6 --

refresh

24 MR. ROSENBLATT: Yes. I'm trying to

25 my recollection.

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1 MR. HEIM: Your Honor, what did you do with  
2 68, 1 through 8?

3 THE COURT: Overruled.

Judge.

4 MR. ROSENBLATT: We'll withdraw that,

5 THE COURT: Okay. Well, if you withdraw  
6 that, which is from 9 to 17, then 18 asks about the  
7 brochure again, and you withdraw all of that, too?

8 MR. ROSENBLATT: Yes.

9 THE COURT: Okay. So, 9 through 25 on Page  
10 68 is withdrawn.

11 69, where are we going with that?  
12 MR. ROSENBLATT: We'll withdraw 69, even  
13 though it's not objected to.  
14 THE COURT: 69, withdrawn.  
15 Page 70, 24 and 25, ETS again.  
16 71, 1 through 7, sustained.  
17 8 through -- let's see. I really didn't  
18 to get into banning smoking on planes. All right. 8  
19 through 25 is sustained.  
20 72, 1 through 13, sustained.  
21 14 through 25, sustained. I don't want to  
22 get into ETS.  
23 And on 73, 1 through 5, sustained.  
24 MR. MARTINEZ: Sustained, Judge, is that  
25 you said?

want

what

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1 THE COURT: Yes. Sustained.  
2 What are you going to do about your  
3 counterdesignation?  
4 MR. MARTINEZ: We withdraw that, Your  
5 THE COURT: Page 73, 10 through 25,  
6 withdrawn.  
7 74, 15 through 17, the answer on 20,  
8 sustained.

Honor.

9 75, 2 through 5, sustained.  
10 75, 9 through 20, overruled.  
11 MR. MARTINEZ: Your Honor, Mr. Reid wanted  
to  
12 address the Joe Camel discussion on this particular  
13 page, if he could.  
14 THE COURT: What about it?  
15 MR. REID: Well, I think it's repetitive  
from  
16 an earlier deposition today, Your Honor. It also  
deals  
17 with issues relating to youth marketing, and this  
18 wasn't brought up to the next hurdle on that.  
19 Therefore, in effect, he's giving an  
opinion  
20 about what he thinks about a particular piece of  
21 advertisement. It's being very specific here instead  
22 of a generic statement.  
23 MR. MARTINEZ: Although counsel can say  
he's  
24 not focusing on this, this is now the second or third  
25 time that they've specifically discussed Joe Camel

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1 today.  
2 MR. REID: Also, he's talking about -- he's  
3 speculating about what somebody might think about  
when  
4 they see the ad as they're driving by. What would  
you

somebody? 5 say to somebody, and how would you respond to

6 It's getting to be very precise testimony, which is

7 purely speculative, as well as cumulative.

perhaps 8 And I know there's the issue we've been

9 dealing with about youth marketing; and I think

10 there's been enough, that we should go on to another

11 subject, and we've finally got that resolved since it

12 is cumulative

13 MR. ROSENBLATT: The media has many times

14 dealt with the Joe Camel ads, and this is --

15 THE COURT: It really doesn't say anything

and 16 other than the fact that the billboard is on there

17 anybody passing by can see it, including little kids

18 and old people.

-- 19 MR. REID: When you look at Page 77, Judge

20 THE COURT: I'm on 75.

21 MR. REID: I'm looking at the whole section

22 about this.

23 THE COURT: Well, I don't have any problem

24 with 75, 8 through 20, and 76, 1 through 17.

25 18 through 25 on Page 76 is out, as well as

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1 Page 77, 1 through 11.

2 MR. REID: Thank you, Your Honor.

Page

is

my

through

3 THE COURT: Okay. Is that it?

4 MR. ROSENBLATT: No.

5 MR. MARTINEZ: No, Your Honor. There is

6 81.

7 THE COURT: 81.

8 MR. ROSENBLATT: 81.

9 THE COURT: 81, Line 4 through 25, I said

10 repetitious, as is 82, as is 83. Well, not

11 repetitious, but it's an inappropriate question, in

12 opinion.

13 So 83, 1 through 7 is out.

14 MR. MARTINEZ: Your Honor, the next one, I

15 believe is on Page 91 -- 90.

16 THE COURT: Okay. Page 90, Line 23, 24 and

17 25, overruled.

18 91, Line 1, 2 and 3, overruled.

19 Line 7 through 10, sustained.

20 MR. ROSENBLATT: You're talking Page 91,

21 Judge?

22 THE COURT: Yes. Page 91.

23 And I said the others were okay. 14

24 25, overruled.

25 And 92, 1 through 24, overruled.

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1 MR. MARTINEZ: I'm sorry. I couldn't hear  
2 you.  
3 THE COURT: Overruled.  
4 MR. MARTINEZ: That's it.  
5 THE COURT: That's it? Okay. So we'll  
start  
6 with that.  
7 MR. ROSENBLATT: And we're meeting at  
quarter  
8 of 9:00?  
9 MR. MARTINEZ: To discuss the others that  
10 you've brought up already.  
11 THE COURT: Okay.  
12 MR. HEIM: Judge, just so I'm sure what  
we're  
13 working on tonight, would you tell me which  
depositions  
14 you have up there?  
15 THE COURT: I don't know which one I'll  
work  
16 on, to tell you the truth.  
17 I've got Merlo. I've got two copies of  
18 Rosenbaum. I don't know why.  
19 And I've got -- which one is this --  
Fulford,  
20 and two copies of Orlowsky.  
21 MR. HEIM: Orlowsky.  
22 MR. REID: Judge, I think our copy of  
23 Rosenbaum was marked up after lunch today, so that  
24 includes the latest.  
25 THE COURT: Which one is your copy?

20062

tell

the

can

1 MR. REID: Let me look at it, and I can

2 you. Mine is the one that's not bound.

3 THE COURT: All right. So this should be

4 working copy?

5 MR. REID: Yes. Right.

6 THE COURT: Let me see the other one. Is

7 that theirs?

8 MR. REID: I assume it was. I was going to

9 give it back to them.

10 THE COURT: Okay. So --

11 MR. REID: I believe that's that.

12 THE COURT: This would be all right. We

13 do the Rosenbaum because that one seems to be agreed

14 to.

15 MS. LUTHER: Except I still have to look at

16 it.

17 THE COURT: You haven't looked at it?

18 MS. LUTHER: Right.

19 THE COURT: Do you want to look at it?

20 MS. LUTHER: I looked at what Mr. --

21 THE COURT: But you haven't looked at this

22 one, so you don't know what's in here?

23 MS. LUTHER: I have looked at what Mr. Reid

24 gave to you, but I have to go out and figure out what

25 the new designations from the plaintiffs this morning



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1 are and see if I have any counterdesignations.

2 MR. REID: I would say go ahead and read  
3 that, though, and we can add hers in the morning. I  
4 won't suspect there will be a lot.

5 MS. LUTHER: From what I can see, I agreed  
6 with everything in there that Mr. Reid gave you.

7 THE COURT: As a counterdesignation?

8 MS. LUTHER: As counterdesignations and  
9 objections.

10 THE COURT: Great. Who is Rosenbaum?

11 MS. LUTHER: He was -- I don't know if he  
12 still is -- a director and officer of Brooke Group.

13 THE COURT: Okay. I think you're going to  
14 run into a problem with the Brooke and Liggett people  
15 and all this business.

16 That's sort of a separate issue here now.

A

17 lot of the thrust of what I've read so far in those

was

18 the fact that although LeBow came in and did testify,  
19 he changed his mind and put the label of addiction on  
20 the label, and we go through that again with these  
21 people here, and I'm not sure whether we're breaking  
22 ground here or not.

23 I really would like you to think about that  
24 over the night. I'll read it and we'll see where we

go

25 with it.

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1 MR. ROSENBLATT: Okay.

2 MR. REID: It's very short.

3 THE COURT: Merlo is with Philip Morris.

4 MR. HEIM: And I think that one is probably  
5 ready to go. I don't think there's any additional  
6 designations on Merlo.

7 THE COURT: Yes. All right. Let's see.  
8 That's only 200 pages. 220.

9 MR. NEWSOM: Your Honor, the reason you  
have  
10 two copies of Orlowsky is I gave you a second one  
that  
11 had crossdesignations.

12 THE COURT: I had a little problem  
13 understanding that. Let me see if I -- I have one  
that  
14 has yellow and orange and blue and green and pink.

15 MR. NEWSOM: Right.

16 THE COURT: Okay. So from what I can see,  
17 almost everything that they designate is objected to.  
18 Almost everything.

19 MR. NEWSOM: Quite a lot of it.

20 THE COURT: It's almost everything.

21 So that would be complete, right?

22 MR. NEWSOM: It's complete except for the

23 crossdesignations we received this morning. We think  
24 some of them are not proper crossdesignations.

25 THE COURT: Those are the things you still

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1 have to talk about?

2 MR. NEWSOM: We haven't objected to the  
3 pinks.

4 THE COURT: Not all of them, just some of  
5 them?

6 MR. NEWSOM: On the pinks, there are only  
7 five of those.

8 THE COURT: Okay. Is there anything else  
9 that has to be added to those?

10 MR. NEWSOM: No. Just our objection to the  
11 pink ones, which we'll give you in the morning.

12 THE COURT: All right. That's no problem.  
13 All right.

14 MR. HEIM: Your Honor, just one other  
thing.

15 I think Your Honor had said that Friday is  
16 going to be a workday, as it has been in the past.

17 THE COURT: Yes.

18 MR. HEIM: To make that go a little better,  
19 from our point of view, if we're going to work off a  
20 subset of the documents that we had from last Friday,  
21 it would be helpful to get that list, you know,

22 tomorrow so we can start pulling the documents.

23 THE COURT: Yes. Tomorrow.

24 MR. HEIM: Yes. Tomorrow is Wednesday. If  
25 we could get the list tomorrow, we can start pulling

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1 them and get prepared.

to

2 So, I mean, if plaintiffs are simply going  
3 work off the same list, it would be helpful to know  
4 that, or if we're going to have a different list, it  
5 would be helpful to know that, too.

in.

6 MR. ROSENBLATT: We brought Cliff Douglas

through

7 We talked to him over the weekend. He's going  
8 documents today. So when I go back to the office  
9 I'll --

10 THE COURT: Who is --

11 MR. ROSENBLATT: Cliff Douglas, who is, you  
12 know, the reader. But that's the main purpose he's  
13 here. He's working back in the office going through  
14 documents.

for

15 THE COURT: Okay. You indicated that you  
16 might cut the list down, too, because there's only a  
17 little bit of the amount of stuff that's set aside  
18 the privileged documents.

19 MR. ROSENBLATT: Right.

20 MR. HEIM: I guess my point was, we started  
21 out, if Your Honor remembers, we had 700 documents

and

22 then counsel cut it back and we did the first two --  
23 actually we did 70 documents.

24 THE COURT: Yes.

25 MR. HEIM: Which is about what we're able

to

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1 get through in a day.

2 So if we can get -- if the next 70 are from  
3 the list that we had last week that we didn't get to,  
4 just simply tell us that and then we know exactly

what

5 we're doing. If it's going to be a different list --

6 THE COURT: If you're picking and choosing  
7 and clipping, you have to know which of the 70 or

which

8 of the numbers are in or out.

9 MR. HEIM: Right.

10 THE COURT: We have to try and do that.

11 MR. HEIM: So if we can learn that

tomorrow,

12 that would be helpful.

13 MR. ROSENBLATT: I'll do my best.

14 THE COURT: I sit here and I marvel at the  
15 amount of work that needs to be done by both sides,

16 putting this together in short order.  
17 MR. REID: What time are we starting in the  
18 morning?  
19 THE COURT: Quarter of 9:00.  
20 MR. REID: You want Mr. Chumbley here?  
21 THE COURT: Yes. We forgot about  
22 Mr. Chumbley.  
23 MR. REID: He'll be here at 8:45.  
24 THE COURT: That shouldn't really be too  
25 long. From what I understand, you're just talking

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over

1 about the blocks and slices?  
2 MR. ROSENBLATT: Yes. There is an issue  
3 the originals.  
4 THE COURT: Yes. I think that's easy to  
5 resolve.  
6 MR. REID: Good night, Judge.  
7 THE COURT: Such a pleasure.  
8 (Court was adjourned at 4:25 p.m.)  
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